

NEW JERSEY BOARD OF PUBLIC UTILITIES

Proposed Readoption With Amendments: N.J.A.C. 14:10, Telecommunications

Proposed new rules: N.J.A.C. 14:10-1

Proposed August 21, 2006

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PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Telephone

Proposed readoption with amendments: N.J.A.C. 14:10

Proposed new rules: N.J.A.C. 14:10-1

Authorized by: Board of Public Utilities, Jeanne M. Fox,
President, Frederick F. Butler, Connie O.
Hughes, Joseph L. Fiordaliso, and Christine V.
Bator, Commissioners.

Authority: N.J.S.A. 48:2-13, 48:2-21.15 through 21.23;
and N.J.S.A. 56:8-1 et seq.

Calendar Reference: See Summary below for an explanation of
exception to calendar requirement.

BPU Docket Number: TX06030230

Proposal number: PRN:

A public hearing will be held on October 17, 2006, at 9:00 a.m. at:

Board Hearing Room
New Jersey Board of Public Utilities
Eighth Floor,
Two Gateway Center
Newark, New Jersey 07102

Submit written comments by October 20, 2006, to:

Kristi Izzo, Secretary
New Jersey Board of Public Utilities
ATTN: BPU Docket No: TX06030230
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The New Jersey Board of Public Utilities (Board) is proposing to readopt its rules governing telecommunications service, N.J.A.C. 14:10 (chapter 10). Pursuant to Executive Order No. 66 (1978), chapter 10 will expire on August 1, 2006 if not readopted. These rules govern telephone utilities and other telecommunications providers that are subject to the jurisdiction of the Board, in such areas as service standards, payments for service, extensions of service, and the regulation of interLATA telecommunications carriers and Alternative Operator Service (AOS) providers.

The Board is herein proposing to readopt chapter 10 with amendments, and with a new subchapter. The Board is readopting all of the subchapters in chapter 10, making changes as necessary to improve the rules and to clarify them.

As the Board has provided a 60-day comment period on the proposed readoption with amendments and new rules, the proposal is exempt from the rulemaking calendar requirements set forth at N.J.A.C. 1:30-3.1 and 3.2, pursuant to N.J.A.C. 1:30-3.3(a)5.

CHAPTER 10 TELECOMMUNICATIONS

The chapter heading is changed from "telephone" to "telecommunications" to reflect changes in the regulated industry. Throughout the rules, changes are proposed to subchapter and section headings to make them more accurately reflect the content of the subchapter or section.

SUBCHAPTER 1 General provisions and definitions for chapter 10

Proposed new 14:10-1.1(a) sets forth the entities and activities to which chapter 10 applies. The addition of this subsection does not change the universe of entities or activities regulated, but it provides a quick reference for the reader to ascertain whether they are subject to the rules.

Proposed N.J.A.C. 14:10-1.1 also clarifies that the Board does not have jurisdiction over interstate telecommunications services, and clarifies that the Board does have some jurisdiction over providers of non-telephone telecommunications services such as pagers, to the extent that the provider is subject to the FCC's number reclamation requirements. Proposed N.J.A.C. 14:10-1.1 includes a cross-reference to the Board's rules for the extension of utility services. A provision holding a TSP responsible for the act of its agents, found in existing N.J.A.C. 14:10-11.5, is relocated here and expanded to apply to all representative of all entities that are subject to the entire chapter. This allows for deletion of the many mentions of this concept throughout the existing rule, making the rule more consistent and more readable.

N.J.A.C. 14:10-1.2 contains definitions used in more than one subchapter of chapter 10. The Board is proposing to remove from each subchapter the definitions of terms that are used in multiple subchapters of chapter 10, and to consolidate these definitions in proposed new N.J.A.C. 14:10-1.2. This will streamline the rules and avoid redundancy. The subchapters from which definitions are taken are, N.J.A.C. 14:10-5.2, N.J.A.C.

14:10-6.2, N.J.A.C. 14:10-7.2, N.J.A.C. 14:10-9.2, N.J.A.C. 14:10-10.2, and N.J.A.C. 14:10-11.1. Some of these sections are being repealed because all of the definitions in them are moved to proposed new N.J.A.C. 14:10-1.2, while others remain because they contain definitions of terms used only in a particular subchapter.

The following definitions are proposed to be moved into new N.J.A.C. 14:10-1.2, and rephrased for clarity, without changing their substance: "access code," "adult-oriented information-access telephone service," "aggregator," "alternate operator service provider," "branding," "competitive local exchange carrier," "competitive telecommunications services," "correctional facility," "customer provided pay telephone service," "customer provided pay telephone service provider," "incumbent local exchange carrier," "information provider," "interexchange carrier," "interLATA toll call," "intraLATA toll call," "intrastate telecommunications service," "LATA," "local exchange carrier," "local call," "operator-assisted services," "operator service provider," "primary interexchange carrier," "public pay telephone service," "public pay telephone service provider," "rate," "reseller," "slamming," "splashing," "subscriber," "telecommunications," "telecommunications service," "telecommunications service provider," "toll call," and "type of service."

The definition of "tariffed facilities-based carrier" is proposed for deletion because it is not used in the proposed readopted rules. The definition of the term "Central Office Code (NXX) Assignment Request and Confirmation Form--Part 4" is renamed "Part 4 Form" for brevity, and rephrased for clarity, at N.J.A.C. 14:10-3.

A new definition of "automated intervention" is proposed. The existing definition of "operator assisted services" includes text that essentially defines "automated intervention." The proposal separates this text out into a separate definition. New definitions are proposed for "basic service," "carrier" or "telecommunications carrier," "clear," "exchange access," "FCC," "facilities-based carrier," "local calling area," "presubscribed OSP," "retail customer," "telephone utility," "toll service" and "wholesale customer." These are all terms used in the existing rules but not defined. The definitions will improve the clarity of the rules.

Proposed new N.J.A.C. 14:10-1.3 includes general requirements for the duration of record retention. The following is a summary of the existing and proposed record retention requirements:

1. Existing N.J.A.C. 14:10-1.15, as well as the Board's rules for all utilities at N.J.A.C. 14:3-7.8, require that all telephone utility records be kept for the time periods required by the FCC (eighteen months for toll service). The substance of this provision is recodified at N.J.A.C. 14:10-1.3. However, cross references are added to clarify that there are exceptions elsewhere in the chapter. These exceptions are detailed at 2 through 5 below;
2. A new requirement to retain measurements and summaries of service quality for five years is proposed at N.J.A.C. 14:10-1.11(b);
3. New retention requirements for records relating to retail customers are proposed at N.J.A.C. 14:10-2.2(f), to facilitate proposed new back billing provisions;

4. Existing N.J.A.C. 14:10-9.8(d), which requires that PPTS providers keep complaint records for two years, is recodified at N.J.A.C. 14:10-9.7(d) without any change in text; and
5. Existing N.J.A.C. 14:10-11.5(d)1i, which provides that records of switch authorization verifications under the slamming subchapter be retained for three years, is replaced by proposed new N.J.A.C. 14:10-11.4(f), which continues the three year records retention requirement.

Proposed new N.J.A.C. 14:10-1.3(b) and (d) require that records be available to Board staff, and authorize Board investigations of tariff compliance. Proposed new N.J.A.C. 14:10-1.3(c) contains a new requirement that each utility or carrier provide a link on its website to the Board's website.

Existing N.J.A.C. 14:10-1.10(a), which requires that service quality records be kept for a time period specified by the Board, is replaced with proposed N.J.A.C. 14:10-1.11, which requires that these records be kept for five years. Existing N.J.A.C. 14:10-9.8(d), which requires that PPTS complaint records be kept for two years, is recodified at N.J.A.C. 14:10-9.7. Existing N.J.A.C. 14:10-11.4(b)3iv, which requires that records of third party verifications be retained for three years, is recodified at N.J.A.C. 14:10-11.4(f), with minor clarifying amendments that do not change its meaning.

SUBCHAPTER 1A Telephone utilities

Existing N.J.A.C. 14:10-1 is recodified as N.J.A.C. 14:10-1A, and renamed to more clearly indicate its contents. Proposed new N.J.A.C. 14:10-1A.1 sets forth the applicability of the subchapter to telephone utilities, which includes any entity providing telecommunications services. Proposed new N.J.A.C. 14:10-1A.2 includes general provisions that apply to telephone utilities, including a cross-reference to the rules for all utilities. Proposed N.J.A.C. 14:10-1A.2(b) contains provisions found in the existing rules at N.J.A.C. 14:10-1.4, which require a utility to make certain maps available to the public on a website. Proposed new N.J.A.C. 14:10-1A.2(c) includes the substance of a provision found in the existing rules at N.J.A.C. 14:10-1.12(h), which requires telephone utilities to furnish information regarding underground facilities. However, for security reasons, the proposed provision limits the utility's obligation to furnish such information to the minimum necessary to comply with the Board's rules for prevention of damage to underground utilities (also called the one-call rules).

Existing N.J.A.C. 14:10-1.2 is proposed to be recodified as N.J.A.C. 14:10-1A.3, with minor clarifying amendments, but no change in meaning. The section requires a telephone utility to provide information to customers regarding the rates, charges and conditions that apply to the service furnished or available; any alternative services available to meet the customer's needs; and an estimate of the charges where special charges not specifically set forth in the telephone utility's tariff are levied. Minor amendments are proposed for clarity, and existing subsection (a) is separated into three subsections.

Existing N.J.A.C. 14:10-1.3 is proposed to be recodified at N.J.A.C. 14:10-1A.4 with no change in text. The section requires telephone utilities to have business offices with sufficient staff to provide adequate service and information to customers, with toll free calling from all areas served. In addition, the section requires utility personnel to be courteous and prompt.

Existing N.J.A.C. 14:10-1.4(a)1 is proposed for deletion because its substance is relocated in N.J.A.C. 14:10-1A.2(b). Existing N.J.A.C. 14:10-1.4(a)2 is deleted because it is redundant.

Existing N.J.A.C. 14:10-1.5 pertains to the publication, distribution and content of telephone directories and the procedures to be followed when telephone numbers are changed subsequent to the publication of a directory. The section is proposed for readoption without substantive change; except for its recodification, and the requirement in (b) that two copies, rather than one copy, of each directory be furnished to the Board's Secretary; and a requirement that the Board's customer service number and website address be placed in the directory.

Existing N.J.A.C. 14:10-1.6 pertains to situations where a telephone utility cannot provide requested services within required time frames. In such a case, the utility is required to keep the customer apprised of the reason for the delay, and to keep records of the customers whose service requests have been delayed. The time frames for filling applications are as follows: for basic dial tone service for an applicant that does not already have a telephone line, within five working days; for an upgrade requested by a customer with an existing telephone line, within thirty days; for provision of special services, within a reasonable period of time; or to meet a previously provided date for service installation. This section is being proposed for readoption with minor clarifying amendments that do not change its meaning, and is being recodified as N.J.A.C. 14:10-1A.6.

Existing N.J.A.C. 14:10-1.7 requires utilities to take customer trouble reports at all hours, and sets deadlines for clearing troubles of various kinds, which vary depending on whether the utility has repair personnel scheduled. The section also requires utilities to make efforts to keep customers informed and to keep all commitments made to customers. The section is proposed for readoption with minor clarifying changes that do not affect its substance, and is being recodified as N.J.A.C. 14:10-1A.7.

Existing N.J.A.C. 14:10-1.8 includes requirements for utilities to make pay telephones available to the public. A cross-reference is added to other provisions that apply to pay telephones at N.J.A.C. 14:10-9. In addition, the provision is being recodified as N.J.A.C. 14:10-1A.8.

Existing N.J.A.C. 14:10-1.9, recodified as N.J.A.C. 14:10-1A.9, pertains to procedures to be employed by telephone utilities to ensure that they maintain enough equipment and staff to ensure adequate service. The section requires the utility to use industry best practices to monitor, record, and analyze data on their capacity in relation to the

traffic on their lines; to forecast future demand; and to take corrective action in the event of inadequate service capacity. The section is proposed for readoption with minor clarifying amendments that do not change its meaning, and is being recodified as N.J.A.C. 14:10-1A.9. In addition, subsection (b) is made slightly more specific regarding recognized industry practices, and existing N.J.A.C. 14:10-1.12(g) is relocated into this section.

Existing N.J.A.C. 14:10-1.10 establishes minimum standards for various measures of service quality. This section is being recodified as N.J.A.C. 14:10-1A.10. Existing N.J.A.C. 14:10-1.10(a) is proposed to be deleted because it is redundant with provisions found elsewhere in the section. Existing N.J.A.C. 14:10-1.10(b)1 through 5, which set forth service quality standards for installation, operator handled calls, customer trouble reports, dial service, and transmission facilities, are separated and recodified in proposed N.J.A.C. 14:10-1A.10(b) through (g). In addition, several of the standards are made slightly more stringent, and two new standards are added, pertaining to calls to the utility's business office (see proposed N.J.A.C. 14:10-1A.10(c)4), and to the performance of switching offices (see proposed N.J.A.C. 14:10-1A.10(d)3).

Existing N.J.A.C. 14:10-1.10(c)1, which specifies how the performance data is sorted and reported, is proposed for deletion and its substance is relocated in proposed N.J.A.C. 14:10-1A.11(e). However, the information is expressed in a narrative, rather than in table form, the reporting units in the existing table are described more fully, each reporting parameter is described in the same language as the corresponding service quality standard, a citation to each standard being reported is added, and reporting for held orders is deleted because Board staff have found that such reporting is not useful in monitoring compliance with the subchapter.

Proposed new N.J.A.C. 14:10-1A.11 contains requirements for reporting measurements and summaries of performance on the service quality standards in N.J.A.C. 14:10-1A.10. A requirement that a utility provide its performance measurements to Board staff quarterly is proposed to be added at N.J.A.C. 14:10-1A.11(b). Existing provisions at N.J.A.C. 14:10-1.10(a), which require submittal of data when noncompliance lasts three months, are deleted and replaced with proposed N.J.A.C. 14:10-1A.11(h) and (i), and a new deadline for the submittal is proposed -- five days after the end of the third month of noncompliance. Existing N.J.A.C. 14:10-1.10(c)2 is recodified as N.J.A.C. 14:10-1A.11(f) and (g), and reorganized and rephrased for clarity. In addition, minor clarifying amendments that do not change meaning are proposed to the section.

Existing N.J.A.C. 14:10-1.10(c)2, which sets forth the basic contents required in reports, is recodified. Existing N.J.A.C. 14:10-1.10(c)2i and ii are found at proposed N.J.A.C. 14:10-1A.10(f), which addresses report contents for standards with which the utility has complied. Existing N.J.A.C. 14:10-1.10(c)2iii and iv are proposed for deletion, to be replaced by proposed N.J.A.C. 14:10-1A.10(g), which addresses report contents for standards with which the utility has not complied. Existing N.J.A.C. 14:10-1.10(c)3, which sets forth the contents of reports on held orders, is proposed for deletion, in order to provide uniformity in reporting. Existing N.J.A.C. 14:10-1.10(c)4 is proposed for

deletion because its substance is found in the introductory language of proposed N.J.A.C. 14:10-1.10(b).

N.J.A.C. 14:10-1.12 Measuring Devices

Existing N.J.A.C. 14:10-1.11, which sets forth requirements for the devices utilities shall use to measure and record service to customers, is recodified at N.J.A.C. 14:10-1A.12. Existing N.J.A.C. 14:10-1.11(a)1 through 3 are deleted because they are obsolete in light of changes in the technology of measuring devices. In addition, clarifying amendments are proposed, that do not change the meaning of the section. Proposed new (d) replaces the text deleted from (a) with a general directive.

Existing N.J.A.C. 14:10-1.12, which requires telephone utilities to adopt a program for inspections, tests and preventive maintenance, is recodified at N.J.A.C. 14:10-1A.13. The section is proposed for readoption with minor clarifying amendments that do not change its substance. In addition, a requirement at existing N.J.A.C. 14:10-1.12(d) that a utility have access to facilities for testing its testing equipment is proposed for deletion as unnecessarily detailed. Existing N.J.A.C. 14:10-1.12(g) is deleted and relocated at proposed N.J.A.C. 14:10-1A.9(d). Existing N.J.A.C. 14:10-1.12(h), which requires telephone utilities to furnish information on location of underground facilities, is proposed to be relocated at proposed N.J.A.C. 14:10-1A.2(e), and limited as described in the summary of N.J.A.C. 14:10-1A.2.

Existing N.J.A.C. 14:10-1.13, which pertains to the prevention and reporting of service interruptions, is recodified at N.J.A.C. 14:10-1A.14, and is proposed for readoption with minor clarifying changes that do not change its substance. In addition, natural disasters and attacks are added to the examples of emergencies, the requirement in (b) for battery backup is expanded to cover remote central offices; and proposed new N.J.A.C. 14:10-1A.14(d) sets forth a new requirement that a utility notify Board staff by telephone of a service interruption, and provide Board staff with information and updates on the interruption. Finally, proposed new N.J.A.C. 14:10-1A.14(e) sets forth a new requirement that utilities submit copies of reports required by the FCC, in order to improve Board staff's information regarding outages.

Existing N.J.A.C. 14:10-1.14, which pertains to the construction of telephone plant, is recodified at N.J.A.C. 14:10-1A.15, is proposed for readoption with minor clarifying changes, and vague language at the end of existing N.J.A.C. 14:10-1.14(a) is deleted. In addition, clarifications are proposed regarding the standards a line must meet for switching service.

Existing N.J.A.C. 14:10-1.15, which requires that records be preserved for the period required by the FCC, is proposed for deletion, because the Board is proposing new records retention requirements at N.J.A.C. 14:10-1A.3.

Existing N.J.A.C. 14:10-1.16(a), which adopts by reference the Uniform System of Accounts for Telephone Companies promulgated by the Federal Communications

Commission, is proposed for readoption with amendments that clarify that this system of accounts does not apply to all entities that the Board regulates under chapter 10. In addition, the section is being recodified as N.J.A.C. 14:10-1A.9. Existing N.J.A.C. 14:10-1.16(b), which provides for an exemption from (a), is proposed for deletion, because the only exemption applications the Board receives are from entities to which the system of accounts does not apply. Since the proposal clarifies in (a) who is subject to the requirement, there is no longer any need for the exemption.

Existing N.J.A.C. 14:10-1.17, which requires registration of telegraph companies, is proposed for repeal because there are no longer any telegraph companies in New Jersey.

Existing N.J.A.C. 14:10-1.18 and 19, which pertains to the distribution and reclamation of telephone numbers among telephone utilities, is proposed for repeal, to be replaced by a separate, updated subchapter devoted to reclamation. Please see the summary of proposed new subchapter 3 below.

SUBCHAPTER 2 PAYMENT FOR SERVICE

Proposed new N.J.A.C. 14:10-2.1 sets forth the applicability of the subchapter, and clarifies that the subchapter applies to all bills, regardless of who presents the bill. The section also includes cross references to other existing requirements.

Existing N.J.A.C. 14:10-2.1, which sets forth the minimum required contents of a bill, is recodified at proposed N.J.A.C. 14:10-2.2(a), with minor clarifying amendments that do not change its meaning, including a corrected cross reference and a clarification of the term “statement” in (a)8 and 9. In addition, new provisions for back billing are proposed at N.J.A.C. 14:10-2.2(b) through (e). These provisions require correction of incorrect billing through customer credits or refunds, or through payment plans by which a customer repays for underbilling. Back billing is limited to eighteen months for wholesale customers, and six years for retail customers.

Existing N.J.A.C. 14:10-2.2, which requires all toll calls to be itemized, is deleted, as it is redundant with proposed N.J.A.C. 14:10-2.2(a)8, with a minor clarification that does not affect meaning.

Existing N.J.A.C. 14:10-2.3, which provides for refunds to customers in the event their service remains interrupted for 24 hours or more, is proposed for readoption with minor clarifying changes that do not affect meaning.

Existing N.J.A.C. 14:10-2.4, which allows a customer to request that service be temporarily suspended and requires that tariffs provide a suspension of service rate, is proposed for readoption with minor non substantive clarifications.

Existing N.J.A.C. 14:10-2.5, which governs discontinuance of service to end-users, was proposed for repeal in a prior rulemaking addressing issues of mass migration of telecommunications carriers, published in the New Jersey Register on September 19,

2005 (see 37 NJR 3623(a)). The Board anticipates adopting the earlier-proposed repeal prior to adopting this readoption.

Existing subchapter 3, which addresses the formula for distributing the costs of an extension of telephone service, is proposed for repeal, as this matter is now governed by the Board's rules at N.J.A.C. 14:3-8.

SUBCHAPTER 3 NUMBER RECLAMATION

Proposed new subchapter 3 contains provisions for number reclamation. This new subchapter replaces provisions for found in existing N.J.A.C. 14:10-1.18 and 1.19. Number reclamation is a program under which telephone numbers are distributed among carriers, and are "reclaimed" if unused. The burgeoning use of telephone numbers for computers, fax machines, pagers, etc., has made telephone numbers a valuable resource that must be shared among many competitors.

After the Board's existing telecommunications rules were adopted, the Federal Communications Commission (FCC) established a program of mandatory number pooling, through which telephone numbers are now assigned in blocks of one thousand. This proposed new subchapter is updated to reflect current conditions, and is also reorganized for clarity.

The FCC has delegated authority to state commissions to investigate and determine whether central office codes (a group of 10,000 telephone numbers) or NXX codes (a group of 1,000 telephone numbers) have been activated by those to whom they have been assigned (also called "code holders") within the time frame designated by the FCC. In an effort to further encourage number conservation efforts by the states, the FCC also authorized states to direct the North American Numbering Plan Administrator ("NANPA") to reclaim central office codes which the state commission determines have not been activated within a certain time.

Therefore, a state can request proof from all code holders to verify that NXX codes have been activated and that the assignment of the numbers to customers has begun. If a state determines that the code holder has not activated the code within six months following the date the code was assigned, the state has the authority to direct NANPA to reclaim the code for reassignment and reuse by another carrier. In addition, a state may require code holders to reduce "contamination," in order to facilitate reclamation and/or pooling. Contamination is the assignment to customers of a small number of telephone numbers, without using the entire block of numbers.

Proposed new N.J.A.C. 14:10-3.1 sets forth definitions that are unique to subchapter 3. Existing N.J.A.C. 14:10-1.18 defined three terms – central office code, "Central Office Code (NXX) Assignment Request and Confirmation Form--Part 4" or "Part 4," and "reclamation." These terms are amended and detail is added for clarification, but their meaning remains unchanged. The existing term "Central Office Code (NXX) Assignment Request and Confirmation Form--Part 4" or "Part 4," is replaced in the proposal with the simpler "part 4 form". Additional terms used but not defined in the

existing reclamation provisions are defined in the proposal in order to provide more clarity and predictability in the requirements. These terms are: "Guidelines," which incorporates by reference FCC guidance documents addressing the distribution, pooling and reclamation of numbering resources, "NANPA" (North American Numbering Plan Administrator), and "pooling administrator." The term "service provider" replaces the existing term "code holder," and two new terms -- "thousands-block," and "thousands-block number pooling" -- that are not used in the existing rule are defined in order to clarify the more detailed provisions in the proposal.

Proposed new N.J.A.C. 14:10-3.2(a) and (b) set forth general provisions relating to number reclamation, including the Board's authority to investigate and determine compliance with FCC requirements, which is not specifically set forth in the existing rules; and requirements for service providers to provide contact information, which is found in existing N.J.A.C. 14:10-1.18(e).

Proposed new N.J.A.C. 14:10-3.2(c) through (h) set forth the basic process the Board staff will follow in monitoring compliance with reclamation requirements. Proposed new N.J.A.C. 14:10-3.2(c), which provides for the Board to notify service providers who have failed to file required FCC number reclamation forms, is taken from existing N.J.A.C. 14:10-1.18(b), with minor clarifying amendments that do not change its meaning.

Proposed new N.J.A.C. 14:10-3.2(d) contains the substance of existing N.J.A.C. 14:10-1.18(c), which requires service providers to submit the forms along with information demonstrating that the service provider has utilized its assigned numbers. Proposed new N.J.A.C. 14:10-3.2(e) provides for a service provider to request an extension of time for filing information, and cross-references the extension section. Proposed new N.J.A.C. 14:10-3.2(f) contains the substance of existing N.J.A.C. 14:10-1.18(d), which provides for reclamation of numbering resources from those who do not comply.

Proposed new N.J.A.C. 14:10-3.2(g) sets forth additional detail concerning the conditions under which a service provider is subject to number reclamation. These conditions relate to underutilization of the numbers, or "contamination" of a block of numbers by not using up the block before using another block, or by using numbers non sequentially. This will provide more predictability and measurability for both service providers and Board staff. Proposed new N.J.A.C. 14:10-3.2(h) authorizes the Board to require a service provider to reduce contamination levels if necessary to facilitate reclamation.

Proposed new N.J.A.C. 14:10-3.3 contains the substance of existing N.J.A.C. 14:10-1.19, which provides for an extension to the deadline for submittal of information under N.J.A.C. 14:10-3.2. Proposed new (a) includes provisions found in existing N.J.A.C. 14:10-1.19(b), which allow only one ninety day extension. Proposed N.J.A.C. 14:10-3.3(b) sets forth the substance of existing N.J.A.C. 14:10-1.19(a), which establishes the requirements for a service provider to request an extension, and adds a requirement for submittal of copies of past extensions granted. Proposed new N.J.A.C. 14:10-3.3(c) establishes the standard for granting an extension, which is found in the existing rules at

N.J.A.C. 14:10-1.19(b). Proposed new N.J.A.C. 14:10-3.3(d) provides for immediate reclamation if a service provider with an extension fails to submit the proper forms within the extension period. This is found in existing N.J.A.C. 14:10-1.19(c).

SUBCHAPTER 4 NON FINANCIAL REPORTING REQUIREMENTS

Proposed new N.J.A.C. 14:10-4 contains the substance of existing N.J.A.C. 14:10-5.9, which sets forth requirements for non financial reporting by ILECs, CLECs and resellers. In addition, new reporting requirements are proposed in recognition of the changes in the market for competitive telecommunications services as a result of the Board's pro-competitive policies.

The proposed new reporting requirements were developed through a collaborative process in which the Board obtained public input on existing N.J.A.C. 14:10-5.9, and in particular on ways to better track and analyze the development of local competition on a geographic level. Based upon the suggestions and comments received, the Board concluded that, while FCC reporting requirements are useful in some regards, they fail to provide information necessary to identify areas of geographic competition or service classification-based competition in a way that enables the Board to thoroughly assess certain aspects of its telecommunications policies. Therefore, the proposed amendments incorporate certain FCC reporting requirements, and in addition require certain data to be provided in a more detailed manner than required by the FCC. An exemption is provided from the requirement for actual, as opposed to estimated, data, in order to prevent an undue burden to reporting entities. The Board believes that the proposed provisions strike a reasonable compromise between the Board's need for essential data and the carriers' limitations on collecting data.

Proposed new N.J.A.C. 14:10-4.1 lists the entities subject to the subchapter. These reporting requirements are substantially expanded to apply to both competitive and non-competitive carriers. While the existing rules apply these requirements to IXC's, proposed N.J.A.C. 14:10-4.1(a), which lists the affected entities, does not include IXC's. At this point, IXC's are sufficiently competitive that these requirements need not be applied to them. The proposal adds a new requirement at (b),(c) and (g), that the carrier file with the Board certain information required by the FCC, and retain the supporting documentation. In addition, the proposal provides for Board audits at (e), annual report deadlines at (f), certification of the information at (h), and allows at (i) and (j) for the use of estimated data in certain situations, with prior approval from Board staff. Existing provisions for a protective order regarding the confidentiality of reported information are not included, but are replaced at (d) by a cross reference to the Board's OPRA rules.

Proposed N.J.A.C. 14:10-4.2 sets forth State-specific requirements for reports, including information not required under the existing rules. The information required is modeled on that required by the FCC, but it will substitute for some of the information required by the FCC, and requires more State-specific data. The required information is very detailed, and requires distinctions among residential, non-residential and wholesale lines; interstate and intrastate long distance service; the types of switching and support

platforms used; and the type of technologies utilized. In addition, much of the information must be sorted by zip code, to enable the Board to track the development of telecommunications needs and changes in services.

SUBCHAPTER 5 COMPETITIVE TELECOMMUNICATIONS SERVICES

Existing N.J.A.C. 14:10-5.1, which sets forth the entities and activities governed by the subchapter, is proposed for re adoption with minor clarifying amendments that do not change its meaning.

Existing N.J.A.C. 14:10-5.2, which contains definitions, is proposed for deletion because all of the definitions in the section are moved to the new consolidated definitions section at N.J.A.C. 14:10-1.2.

Existing N.J.A.C. 14:10-5.3, which requires the filing of informational tariffs for all competitive telecommunications services, is recodified at N.J.A.C. 14:10-5.2, and proposed for re adoption with minor clarifying amendments that do not change its meaning.

Existing N.J.A.C. 14: 10-5.4, which sets forth requirements for the contents of tariff revisions that increase charges, is recodified at N.J.A.C. 14:10-5.3, and proposed for re adoption with minor clarifying amendments that do not change its meaning.

Existing N.J.A.C. 14:10-5.5, which provides for tariff revisions that do not increase charges to become effective five days after filing and notice to customers, is recodified at N.J.A.C. 14:10-5.4, and proposed for re adoption with minor clarifying amendments that do not change its meaning. A cross reference to N.J.A.C. 14:10-5.11(a)4 is replaced with a cross reference to N.J.A.C. 14:10-5.11 so as to refer to the new provisions for withdrawal of a service. Finally, a cross reference to rules governing other types of tariffs is added at (c).

Existing N.J.A.C. 14:10-5.6, which contains requirements for new competitive telecommunications service offerings by existing interexchange carriers, is recodified at N.J.A.C. 14:10-5.5, and proposed for re adoption with minor clarifying amendments that do not change its meaning. Proposed N.J.A.C. 14:10-5.5(b)1 through 4 consolidate and clarify the required contents of a deficiency letter. In addition, the proposal deletes a requirement at N.J.A.C. 14:10-5.6(c)2 and 3 for submittal of a written schedule containing detailed information regarding the proposed service offering, as Board staff have not found this necessary, and also deletes subsection (d) reiterating the Board's authority to investigate noncompliance.

Existing N.J.A.C. 14:10-5.7, which pertains to initial tariff filings for competitive local exchange carriers (CLECs) and interexchange carriers (IXCs), is recodified at N.J.A.C. 14:10-5.6, and is proposed for re adoption with minor clarifying amendments that do not change its meaning. Some of the provisions are reorganized, or split into smaller subsections, and additional detail regarding the deficiency letter process is added at

proposed new (f). The substance of existing (c) is relocated at proposed (b). Existing (d) is proposed for deletion, as it addresses existing tariffs, not initial tariff filings.

Existing N.J.A.C. 14:10-5.8, which was reserved, is proposed to contain the substance of existing N.J.A.C. 14:10-5.11.

Existing N.J.A.C. 14:10-5.9, which contains non-financial reporting requirements, is proposed to be relocated to N.J.A.C. 14:10-4. For more information, see the summary of that section above.

Existing N.J.A.C. 14:10-5.10, which sets forth the standards and information that the Board will use to monitor the competitiveness of services, is proposed for readoption with minor clarifying amendments that do not change its meaning, and recodified at N.J.A.C. 14:10-5.7. A cross reference to N.J.A.C. 14:10-5.9 is changed to N.J.A.C. 14:10-4, in order to broaden the sources of information from which the Board may draw when monitoring competitiveness, and to include new provisions for detailed non-financial reporting. Existing N.J.A.C. 14:10-5.10(a)1 is split between proposed (a) and proposed (b)1. Existing (a)2 and 3 are recodified as (b)2 and 3. Additional types of measurements are authorized under proposed new (b)2 to improve the Board's monitoring capabilities.

Existing N.J.A.C. 14:10-5.11, which pertains to the discontinuance of competitive service offerings, is recodified at N.J.A.C. 14:10-5.8. The section is proposed for readoption with clarifying amendments. In addition, the scope of the section is narrowed to apply only to the withdrawal of a service from customers that are signed up for the service. The term "discontinuance" is changed to "withdrawal" to more clearly distinguish this from the discontinuance of a service offering to customers that are not already signed up for it, which is addressed by proposed new N.J.A.C. 14:10-5.9.

Proposed new N.J.A.C. 14:10-5.9 allows a carrier to withdraw a service offering from customers who have not signed up for the service on one-day notice. A provision found in existing N.J.A.C. 14:10-5.11, which allows the Board to prohibit a carrier from discontinuing or withdrawing a service if a sole carrier provides the service, is also included in both proposed N.J.A.C. 14:10-5.8 and 5.9.

SUBCHAPTER 6 OPERATOR SERVICE PROVIDERS

Existing N.J.A.C. 14:10-6.1, which sets forth the scope of subchapter 6, is proposed for readoption with minor clarifying amendments that do not change its meaning. Existing N.J.A.C. 14:10-6.2, which contains definitions, is proposed for deletion as the definitions have all been relocated to proposed new N.J.A.C. 14:10-1.2.

The proposal separates existing N.J.A.C. 14:10-6.3 into several sections for easier understanding. Proposed N.J.A.C. 14:10-6.2 contains provisions found in existing N.J.A.C. 14:10-6.2(a) through (c), which set forth the scope of the subchapter and the Board's authority to investigate and enforce against non complying entities. These

provisions are readopted with minor clarifying amendments that do not change their meanings and additional detail is added to (b).

Existing N.J.A.C. 14:10-6.3(d) through (f), which contain requirements for OSPs to notify callers of the identity of the OSP and other relevant information, are proposed to be recodified as N.J.A.C. 14:10-6.3(a) through (d), with minor reorganizations and clarifying amendments that do not change meaning, including deletion of an example found in proposed (a)3.

Existing N.J.A.C. 14:10-6.3(g) is proposed for deletion, as it is redundant with proposed N.J.A.C. 14:10-6.3(b)3. Proposed new (c) includes the substance of the last sentence of existing N.J.A.C. 14:10-6.3(e), rephrased for clarity. Proposed (d) broadens the obligation of the OSP to ensuring compliance with all the requirements of the section, and requires that an OSP provide Board staff with contracts demonstrating compliance.

Proposed new N.J.A.C. 14:10-6.4 contains provisions found in the existing rules at N.J.A.C. 14:10-6.3(h) through (m), which contain OSP rates, provisions for modification of rates, and a requirement for informational tariffs. The provisions are proposed to be recodified as N.J.A.C. 14:10-6.3(a) through (d), with reformatting and clarifying amendments that do not change their meaning. The substance of existing N.J.A.C. 14:10-6.3(h) and (i) is found in proposed N.J.A.C. 14:10-6.4(a). Existing N.J.A.C. 14:10-6.3(j) is split between proposed N.J.A.C. 14:10-6.4(b) and (c), with minor clarifying amendments that do not change meaning. A cross reference is added to proposed (d) to more clearly identify display requirements. Existing N.J.A.C. 14:10-6.3(l) is proposed for deletion because it merely restates the scope of the subchapter, and existing (n) is proposed for deletion because it applies to a time period that has passed.

Existing N.J.A.C. 14:10-6.4, which contains requirements to ensure that callers can obtain access to an OSP of their choice, is recodified at N.J.A.C. 14:10-6.5. Proposed new (e) provides steps a carrier can take to avoid splashing.

Existing N.J.A.C. 14:10-6.5, which pertains to "0-" and emergency call handling, is recodified at N.J.A.C. 14:10-6.6, and is proposed for readoption with minor clarifying amendments that do not change its meaning. Through this rulemaking emergency call handling will be simplified to reduce the level of detail required to obtain Board approval to handle these calls, and also to eliminate some detailed recordkeeping and reporting. Traffic studies and records are available to the Board upon request and if necessary will be reviewed by Staff. A requirement that certain information be submitted to the Board annually is proposed for deletion, as it is sufficient that Board staff may require the information at any time. Existing (d)9 through 11, which require detailed call recording and reporting, are proposed for deletion, as Board staff has found that they are not necessary to ensure compliance with the rules.

Existing N.J.A.C. 14:10-6.6, which establishes penalties for violations of requirements for OSPs, is recodified at N.J.A.C. 14:10-6.7, and proposed for readoption with clarifying

amendments that do not change its meaning. The last two sentences of existing N.J.A.C. 14:10-6.7(a) and all of existing N.J.A.C. 14:10-6.7(b) provide for each violation and each day of violation to trigger a separate penalty. The substance of these provisions is relocated in proposed (b) and (c) and clarified. A heading is proposed for the table of penalties, and the citations in the table are updated.

Existing N.J.A.C. 14:10-6.7, which requires alternate operator service provider informational tariffs, is proposed for recodification at N.J.A.C. 14:10-6.8, and is proposed for readoption with minor clarifying amendments that do not change its meaning. In addition, requirements at existing N.J.A.C. 14:10-6.7(b) for filing of balance sheets, income statements, stakeholders in the firm and employee qualification reports are proposed for deletion in order to minimize the burden on competitive entities.

Existing N.J.A.C. 14:10-6.8, which contains additional requirements for LECs that provide billing services, is recodified at N.J.A.C. 14:10-6.9, and proposed for readoption with minor clarifying amendments that do not change its meaning.

SUBCHAPTER 7 ADULT-ORIENTED INFORMATION ACCESS TELEPHONE SERVICE

Existing N.J.A.C. 14:10-7.1, which sets out the scope of subchapter 7, is proposed for readoption with minor clarifying amendments that do not change its meaning. In addition, the proposed deletion of existing N.J.A.C. 14:10-7.1(b) expands the scope of the section to any entity that provides adult-oriented information access telephone service. This change reflects the expansion of the market to non traditional telecommunications providers.

The definitions in existing N.J.A.C. 14:10-7.2 have been moved to N.J.A.C. 14:10-1.2 and the section is reserved.

Existing N.J.A.C. 14:10-7.3, which requires restrictions on access to adult-oriented services, and information on the restrictions included in telephone directories, is proposed for readoption with minor clarifying amendments that do not change its meaning. Proposed deletions at (b) and (c) are replaced by a new provision at (d)1. Redundant verbiage is proposed to be deleted from existing (d)1 and 2 (proposed at (d) 2 and 3).

N.J.A.C. 14:10-7.4, which details the procedure for a subscriber to obtain access to adult-oriented information access telephone service, is proposed for readoption with minor clarifying amendments that do not change its meaning.

SUBCHAPTER 8 (RESERVED)

Subchapter 8 remains reserved.

SUBCHAPTER 9 PUBLIC PAY TELEPHONE SERVICE

Existing N.J.A.C. 14:10-9.1, which sets forth the scope of the subchapter, is proposed for readoption with minor clarifying amendments that do not change its meaning. The final clause in the provision is deleted because it is wrong. The subchapter does apply to inmate telephone service.

Existing N.J.A.C. 14:10-9.2, which contains definitions pertaining to public pay telephone service, is proposed for deletion because all of these definitions are relocated at N.J.A.C. 14:10-1.2.

Existing N.J.A.C. 14:10-9.3(a) through (d) set forth the basic requirements for the public pay telephone instrument itself, such as free access to certain calls, and basic information requirements for display on the instrument. These subsections are recodified as N.J.A.C. 14:10-9.2, and proposed for readoption with minor clarifying amendments that do not change meaning. In addition, existing N.J.A.C. 14:10-9.3(m) is relocated in this section at N.J.A.C. 14:10-9.2(d). Existing N.J.A.C. 14:10-9.3(c) is replaced by new (b)6. Existing N.J.A.C. 14:10-9.3(d)1 through 7 are replaced with a cross reference to identical provisions at proposed N.J.A.C. 14:10-6.3(a).

Existing N.J.A.C. 14:10-9.3(e) through (l) set forth basic requirements of PPTS service, including the types of information and calls available through PPTS, requirements that the PPTS provider file contact information with the Board, a prohibition on charging for uncompleted calls, and a reiteration of the Board's authority to investigate and rectify any non compliance. These subsections are recodified as N.J.A.C. 14:10-9.3(a) through (f), and proposed for readoption with minor clarifying amendments that do not change meaning. In addition, existing N.J.A.C. 14:10-9.3(h) is moved to proposed N.J.A.C. 14:10-9.5(d).

Existing N.J.A.C. 14:10-9.4 contains additional requirements for PPTS, including limits on directory assistance charges, call concentration, and extensions; as well as reporting requirements regarding instruments and principals of the PPTS company. Requirements for filing an acknowledgment form, quarterly report of CPPTS disconnections, and percentage ownership interests of the principals of the firm, set forth at existing N.J.A.C. 14:10-9.4(a)4, 6 and 7ii, respectively, are proposed for deletion. The Board's experience has been that this information has not been sufficiently useful to justify the burden on CPPTS providers. A provision for confidentiality of submitted information is deleted because all confidentiality requests are now governed by the Open Public Records Act. Other than these changes, these provisions are proposed for readoption with minor clarifying amendments that do not change their meaning.

Existing N.J.A.C. 14:10-9.5, which requires ILECs to allow a customer to retain a telephone number for use with CPPTS, is recodified at N.J.A.C. 14:10-9.4(b), with minor clarifying amendments that do not change its meaning, and an updated cross reference.

Existing N.J.A.C. 14:10-9.6, which pertains to the installation of public pay telephone service instruments, is recodified as N.J.A.C. 14:10-9.5(a) through (c), and proposed for readoption with minor clarifying amendments that do not change its meaning. A redundant provision is deleted at proposed N.J.A.C. 14:10-9.5(c). In addition, existing N.J.A.C. 14:10-9.3(h), which requires prompt repair of PPTS instruments, is relocated to N.J.A.C. 14:10-9.5(d).

Existing N.J.A.C. 14:10-9.7 sets forth special provisions for inmate pay telephone service. The section is recodified as N.J.A.C. 14:10-9.6, and a requirement at existing N.J.A.C. 14:10-9.7(c) that the provider of inmate telephone service provide a description of service to the Board is deleted as these instruments will already be reported in accordance with proposed N.J.A.C. 14:10-9.4(a)4. These exemptions are provided because these are controlled by government entities and special conditions are appropriate.

Existing N.J.A.C. 14:10-9.8, which requires PPTS providers to implement complaint handling procedures and record keeping, is recodified as N.J.A.C. 14:10-9.7, and proposed for readoption with no changes.

SUBCHAPTER 10 INTRALATA TOLL COMPETITION

Existing N.J.A.C. 14:10-10.1, which sets forth the scope of the subchapter and lists the entities to which the subchapter applies, is proposed for readoption with minor clarifying amendments and additional detail, but with no change in meaning. The subchapter governs the completion of toll calls within LATAs. Proposed new language in (a) clarifies the applicability of the section, and proposed new language in (b) clarifies what presubscription is and the consequences of not presubscribing.

Existing N.J.A.C. 14:10-10.2 is proposed for deletion as the definitions it contained are proposed to be relocated at N.J.A.C. 14:10-1.2.

Existing N.J.A.C. 14:10-10.3(a), (c), (d) and (f) are proposed for deletion because they pertain to the conversion to presubscription. However, all conversion is now complete. These provisions, which were once relevant to competition, are no longer relevant in the mature competitive environment. Existing N.J.A.C. 14:10-10.3(b), which sets forth basic requirements for LECs seeking subscriptions for intraLATA service, is recodified at N.J.A.C. 14:10-10.1(c). The last sentence of existing (e) is proposed for deletion because it is redundant.

Existing N.J.A.C. 14:10-10.4, which provides for the recovery of costs associated with the implementation of toll presubscription, is proposed for deletion as the costs of interLATA toll presubscription have already been recovered.

Existing N.J.A.C. 14:10-10.5 contains safeguards related to local exchange service. The section is renamed, and redundant provisions at N.J.A.C. 14:10-10.5(a) and (c) are proposed for deletion. Existing (b) is simplified and (f) and (g) are deleted, as (f) relates to ratemaking which is not a subject of the rules, and (g) relates to violations, which are

covered elsewhere. The remainder of the section is recodified as N.J.A.C. 14:10-10.2, with minor clarifying amendments that do not change its meaning.

Existing N.J.A.C. 14:10-10.6, which pertains to the classification of intraLATA toll services as competitive, is proposed for repeal, because the proposed new non-financial reporting provisions are adequate to provide all necessary information to judge competitiveness.

Existing N.J.A.C. 14:10-10.7 pertains to imputation standards which ensure that LECs charge their customers for toll service no less than the LEC charges other carriers for access to the LEC's lines. The section is proposed for recodification as N.J.A.C. 14:10-10.3. Existing N.J.A.C. 14:10-10.7(b) and (d), and portions of existing (f), which set forth detailed formulae, are proposed for deletion, to be replaced with a cross reference in (a) to the LEC's tariffs and a simpler standard of comparison for the LEC's toll charges. Citations to subsections in proposed (f) (existing (e)) and in proposed (g) (existing (f)) are replaced with broader references to the entire section. Detailed provisions at existing N.J.A.C. 14:10-10.7(f)1 through 7, which provide for the confidentiality of certain information, are replaced with a cross reference to the Board's Open Public Records Act (OPRA) rules, which now govern all Board confidentiality determinations. In addition, the proposal includes several minor clarifying amendments that do not change meaning. Existing N.J.A.C. 14:10-10.3(d)1 is recodified as proposed N.J.A.C. 14:10-10.7(d) and clarified. Proposed new (e) refers to the LEC's tariff for special access rates.

SUBCHAPTER 11 ANTI-SLAMMING REQUIREMENTS FOR TSPS

Proposed new N.J.A.C. 14:10-11.1 sets forth the scope of the subchapter, and lists the entities and the activities to which it applies. In addition, general provisions are proposed regarding non-exclusivity of remedies; and a requirement that a TSP act to prevent continuing violations is relocated here from existing N.J.A.C. 14:10-11.5(b).

Existing N.J.A.C. 14:10-11.1, which contains definitions of terms used in the subchapter, is recodified at N.J.A.C. 14:10-11.2, and the following definitions are proposed for deletion because either they are not used in the rule text or they are found in proposed N.J.A.C. 14:10-1.2: "authorized TSP change," "Board," "Commission," "Division," "interLATA telecommunications service," "intraLATA telecommunications service," "intrastate telecommunications service," "local access and transport area" or "LATA," "local exchange telecommunications service," "slamming," "soliciting telecommunications service provider," "telecommunications," "telecommunications service," and "telecommunications service provider" or "TSP." Existing definitions of "agent," "authorized carrier," "customer," "executing TSP," "primary TSP" "submitting TSP" and "unauthorized change" are proposed for readoption with clarifying amendments that do not change meaning.

Existing N.J.A.C. 14:10-11.2, which sets forth requirements and restrictions for information disclosures during solicitation of TSP switch authorizations, is recodified as N.J.A.C. 14:10-11.3. This section is proposed for readoption with minor clarifying

amendments that do not change its meaning, and additional information regarding types of services affected is required under proposed new N.J.A.C. 14:10-11.3(a)3.

Existing N.J.A.C. 14:10-11.3, which sets forth requirements for verifying customer authorization of the submittal of a request to switch TSPs, is proposed for deletion, to be replaced by four sections (proposed new N.J.A.C. 14:10-11.4 through 7) that include its substance, as described below.

Proposed new N.J.A.C. 14:10-11.4 contains the basic requirement for verification, and lists the three possible ways to verify an authorization for a switch. It also requires compliance with FCC anti-slamming regulations, which are incorporated by reference (this is found in existing N.J.A.C. 14:10-11.3(b)), and requires separate authorizations for each line and each service switched (currently found in existing N.J.A.C. 14:10-11.5(e)). Proposed new N.J.A.C. 14:10-11.4(e) requires submittal of a change order within sixty days after the verification. This is applied to letters of agency in the existing rules at N.J.A.C. 14:10-11.5(d)1i, but is expanded in the proposal to apply to all types of verifications. A provision requiring the retention of records of verifications for three years is proposed to be relocated to proposed N.J.A.C. 14:10-11.4(f) from existing N.J.A.C. 14:10-11.5(d)1i.

Proposed new N.J.A.C. 14:10-11.5 contains provisions for the use of a letter of agency to verify an authorization for a TSP switch. This proposed new section contains existing provisions for use of letters of agency, currently found at N.J.A.C. 14:10-11.3(b)1. In addition, this section includes provisions found in the existing rules at N.J.A.C. 14:10-11.3(b)2, which permit authorizations to be obtained by telephone. Because the Board's requirements for this type of authorization are the same as those of the FCC at 47 C.F.R. §64.1120, the proposal replaces the text with a cross reference to that FCC regulation.

Proposed new N.J.A.C. 14:10-11.6 sets forth the requirements for third party verification of TSP switch authorizations. The substance of this section is found in existing N.J.A.C. 14:10-11.3(b)3. Existing N.J.A.C. 14:10-11.3(b)3i through iv are recodified as proposed (c) through (g). The section includes requirements governing the independence of third party verifiers, the content and language of the verification, the use of conference calls and automated systems, recordkeeping, and a submittal deadline. Proposed new (a) introduces the section. Introductory language at existing N.J.A.C. 14:10-11.3(b)3 is recodified and rephrased for clarity at proposed (b). Existing N.J.A.C. 14:10-11.3(b)3i through iv are recodified and edited for clarity at proposed (c) through (g). A new requirement that the date of the verification be recorded is proposed at (e)2. Existing (c) is deleted as it is redundant and unnecessary. Proposed new N.J.A.C. 14:10-11.6(h) and (i) contain new requirements for a third party verifier in addressing questions from the customer, including a requirement that the verifier offer to terminate the call until after the TSP's sales agent has answered the customer's questions. A clarifying example is added to existing (d), proposed at (j). Existing (e) is deleted because it is confusing. Finally, existing N.J.A.C. 14:10-11.4(f) is proposed for readoption with minor clarifying amendments that do not change its meaning, and recodified at N.J.A.C.

14:10-11.7(k) and (l). This subsection provides for groups of customers to be transferred from one TSP to another through a sale or transfer of a TSP, in accordance with FCC requirements.

Existing N.J.A.C. 14:10-11.4, which sets forth the requirements for an executing TSP upon receipt of a valid change order, is recodified as N.J.A.C. 14:10-11.7, and is proposed for readoption with minor clarifying amendments that do not change its meaning. In addition, new language is proposed at (j), which contains the substance of existing N.J.A.C. 14:10-11.5(d)2 – requiring separate verifications for each line and each service. New deadlines for the submittal of verifications are proposed at N.J.A.C. 14:10-11.7(a), and proposed new (b) clarifies the role of the executing TSP in verifications. Finally, a provision requiring the retention of records of verifications for three years is proposed to be relocated to proposed N.J.A.C. 14:10-11.4(f) from existing N.J.A.C. 14:10-11.5(d)1i.

Existing N.J.A.C. 14:10-11.5, which contains provisions regarding the determination of whether a slam has occurred, is recodified as proposed N.J.A.C. 14:10-11.8, and clarified. However, existing N.J.A.C. 14:10-11.8(a), which provides that a TSP is responsible for the act of its agents, is relocated and expanded at N.J.A.C. 14:10-11.1(d) to apply this requirement to all representatives of all entities that are subject to the entire chapter. Existing N.J.A.C. 14:10-11.5(b), which requires that a TSP shall take steps to stop its agents from violating the slamming rules, is relocated at proposed N.J.A.C. 14:10-11.1(c). Existing N.J.A.C. 14:10-11.5(d)1i is proposed for relocation to N.J.A.C. 14:10-11.1, and existing N.J.A.C. 14:10-11.5(d)1ii is deleted, as it is redundant and unnecessary. Existing N.J.A.C. 14:10-11.5(d)2 is proposed to be relocated to proposed N.J.A.C. 14:10-11.4(d) and rephrased for clarity. Existing (d)1 is deleted because it is unnecessary.

Existing N.J.A.C. 14:10-11.6, which provides for TSP freezes, is proposed for recodification at N.J.A.C. 14:10-11.9. Proposed new explanatory language regarding freezes, what they are, how they are imposed and lifted, and who is responsible for implementing them, is added for clarity at proposed (a), (d), and (e). Existing (b) and (c) are proposed for readoption with minor clarifying changes that do not change their meaning. Existing (d) is recodified as (f) and amendments are proposed to clarify the relationship of these rules to FCC requirements. Existing N.J.A.C. 14:10-11.6(d)1 through 4, which contain the substance of FCC requirements (which are incorporated by reference), are set forth at proposed (f)1 through 5.

Existing N.J.A.C. 14:10-11.7(a) and (b), pertaining to investigations, are proposed for readoption with no change in text, and relocated to proposed N.J.A.C. 14:10-11.10(f) and (g).

Existing N.J.A.C. 14:10-11.8, which addresses penalties, is recodified at N.J.A.C. 14:10-11.10, and renamed. The section requires due care, and lists the types of remedies for violations that are available to the Board. Minor clarifying changes are proposed, which do not change the meaning of the provisions. A clarification is added to (b)3 that Board staff may in some cases determine remedies. This is necessary to ensure efficient operation of the Board's enforcement activities. Part of existing N.J.A.C. 14:10-11.8(c), which lists factors the Board will consider in determining a penalty for violation, is relocated to a new section (described below), proposed N.J.A.C. 14:10-11.11. The remainder of existing (c) is found in proposed (c) and (d). Proposed new N.J.A.C. 14:10-11.10(f) clarifies that the remedies provided for are in addition to any others.

Proposed N.J.A.C. 14:10-11.11 is an entirely new section, which sets forth detailed criteria for the determination of penalties within the ranges authorized by statute. The section includes a penalty matrix, which provides a clear understanding of the factors the Board will use in determining penalties, and the range of penalties for each type of violation. This matrix system will provide consistency and predictability regarding the consequences of violating the slamming rules.

Proposed new N.J.A.C. 14:10-11.11(b) provides that each violation of a separate provision of the rules, as it relates to each separate line, constitutes a separate violation. Thus, a TSP that has performed an unauthorized switch of regional service on each of ten lines would be liable for ten violations; and a TSP that performed an unauthorized switch of local, regional, and long distance service on one line would be liable for three violations.

The proposed new section classifies violations as minor, moderate, or major, and a penalty range is assigned to each classification. In addition the penalty range increases for repeat violations. Within these ranges, Board staff may adjust a penalty based on the specific facts of a case, taking into account the factors listed at proposed N.J.A.C. 14:10-11.11(j). These factors are generally the same as those in the existing rules at N.J.A.C. 14:10-11.8(c), except that a redundant reference to the TSP's ability to pay the penalty is deleted, and the TSP's effort to achieve compliance is added as a factor to consider in adjusting a penalty.

Existing N.J.A.C. 14:10-11.9, which provides for non-exclusivity of the Board's rights and remedies and which expressly states that the rules do not limit State powers, is recodified at proposed N.J.A.C. 14:10-11.11(k) and (l), and a cross reference to P.L. 1998, c.82, which governs consumer fraud including slamming, is replaced with a broader term that covers the entire chapter, to more accurately reflect the Board's legal authority.

Social Impact

The proposed readoption of the telecommunications rules with amendments will have a positive social impact in that the rules ensure the provision of safe, adequate and proper telecommunications service in New Jersey. The proposed clarifications will assist the regulated community and the public in understanding the rules. In addition, new reporting and enforcement provisions will improve Board compliance monitoring, provide a more effective deterrent to violation, and ensure predictability and consistency in the assessment of penalties.

Economic Impact

The proposed readoption with amendments will continue the existing overall beneficial economic impact of these rules. Despite major strides in deregulation of telecommunications, these rules are still instrumental in protecting the public from many types of economic harm that could result from unrestrained market power in the telecommunications industry. The rules impact the operations of telephone utilities and telecommunications service providers through costs for, among other things, inspecting and testing their plant and maintaining and submitting required records or reports and billing information. The benefits of these activities easily outweigh the cost to regulated entities. The slamming subchapter protects the economic interests of TSPs as well as the public, by preventing the unauthorized switching of customers from one TSP to another. The new rules, repeals and amendments do not impose any additional costs or fees on those regulated. For telephone utilities, expenses reasonably incurred for compliance with this chapter may be passed along to ratepayers. For competitive telecommunications carriers, the Board believes that these compliance costs are reasonable, and are necessary in order to ensure safe, adequate and proper telecommunications service to New Jersey citizens.

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-22 through 24 require State agencies that adopt, readopt or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis.

The Federal rules that correspond to those in N.J.A.C. 14:10 are promulgated and implemented by the FCC. The Board has incorporated several FCC rules by reference in N.J.A.C. 14:10, including the FCC Uniform System of Accounts for Telephone Companies, 47 CFR Part 32.

The proposed readoption with amendments exceeds the FCC's record retention requirements (see 47 CFR Part 42) for retail customers as regards billing. The Board requires a six year period for retention of records, as regards any records necessary to facilitate back billing for retail customers. The Board believes this more stringent requirement is necessary in light of the complexity of bills and the fact that it is now common among customers to have multiple lines. The expanded timeframe for record retention allows customers an opportunity to review their bills and act on any discrepancies discovered in billing.

The proposed new non-financial reporting requirements are more stringent than the FCC's reporting requirements which FCC reporting requirements at 47 CFR Part 43. The new requirements will enable the Board to evaluate the success of its policies and local competition for both residential and business customers on a geographic basis over time. Because of the high population density and small geographic area of New Jersey, the ability to track telecommunications use in detail is important to enable the Board to further refine its policies to ensure that it can effectively carry out its legislative mandate.

The readopted provisions relating to adult-oriented information access telephone service are in some ways more stringent than those of the FCC. At 47 CFR Part 64, the FCC requires that local exchange carriers offer to their subscribers an option to block access to services offered on the 900 access code. Pursuant to N.J.S.A. 48:17-22, the Board in N.J.A.C. 14:10-7 requires blocking not only of 900 number services, but also of 700 NXX adult oriented lines. Unblocked access to adult oriented 700 NXX and 900 NXX may be obtained by written authorization by the subscriber. Further, customers have the ability to block all 900 calls, consistent with 47 CFR Part 64.

The rules proposed for readoption are consistent with the FCC rules at 47 C.F.R. §64.703, which contain information disclosure requirements for interstate, interexchange, domestic and 0+ operator assisted calls. The Board's rules permit the same standards to apply to intrastate as well as other operator service provider calls. The Board's rules contain the substance of the Federal regulations regarding notifying customers of the rates for operator service assisted calls. However, the Federal regulations specifically address interstate calls. The Board lacks the authority to regulate interstate calls and therefore has tailored the rules to apply to intrastate calls.

The FCC anti-slamming regulations are found at 47 C.F.R. §§64.1100 et seq. The rules proposed for readoption in N.J.A.C. 14:10-11 contain the substance of the FCC rules. The proposal also includes new requirements that a TSP submit a change order within sixty days after obtaining a verified authorization, and that the date of the verification be noted on the change order. The FCC does not impose these requirements and therefore these provisions are more stringent than the Federal ones. The Board believes, based on its experience with change orders, that this additional stringency is necessary to protect consumers. In addition, the proposal adds a detailed penalty section, which provides additional detail on the process that Board staff will follow to arrive at a penalty in each case.

N.J.A.C. 14:10-11 includes a verification mechanism which requires that when a consumer initiates a change of telecommunications service provider, the new TSP must verify the change according to the process set forth in the rules. This confirmation procedure is designed to safeguard the rights of the consumer.

In addition to incorporating the FCC's letter of agency requirements from 47 CFR 64.1130, the rules proposed herein require that the TSP notify consumers of the rates,

terms and conditions of service and advise them of the amount of the maximum charge to change TSP.

The FCC's rules neither require nor forbid the imposition and lifting of primary TSP freezes, nor do they require or forbid the imposition of charges for such freezes (see 47 C.F.R. 64.1190). The Board's rules require that all TSPs responsible for the implementation of changes of primary TSPs adopt a primary TSP freeze plan which provides for the imposition and lifting of freezes at no cost to the customer. The Board notes that the State's local exchange carriers already provide a primary TSP freeze at no charge to customers when requested. These consumer protection features continue the Board's policy of protecting the consumer at minimal cost to the TSP. The public policy of consumer protection outweighs the minimal cost to the TSP.

The Board requires the TSP to provide quarterly reports detailing the status of slamming complaints and authorized primary TSP change orders. This is not required by the FCC. These reports assist the Board and the Division of Consumer Affairs in providing timely and accurate information regarding the resolution of the complaints and to ensure that change orders are processed promptly. This requirement does not pose a burden to the TSPs as they have an internal tracking system for the complaints and change orders.

Jobs Impact

The rules may result in the hiring of additional personnel to ensure compliance with the regulations and to carry out the duty of training staff in the contents of the rules. However, the number of personnel needed is likely to be small, and the rules will not likely have a significant effect on jobs in the State.

Agriculture Industry Impact

The Board does not expect that any impact on the agriculture industry will result from the proposed readoption with amendments. Telecommunications services are not an integral part of agricultural operations.

Regulatory Flexibility Analysis

The proposed readoption with amendments of N.J.A.C. 14:10 will impose minimal recordkeeping, reporting or other compliance requirements on small businesses. A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 employees.

As discussed in the Summary above, the rules proposed for readoption with amendments in N.J.A.C. 14:10-1 through 8 will impose compliance requirements on telecommunications providers, some of which may be "small businesses." In addition, it will impose some costs as described in the economic impact and summary above. Compliance with these requirements should not require telecommunications providers to employ professional services, as the requirements can be met utilizing personnel

necessary for the conduct of their business. As these rules are designed to benefit customers who are provided telecommunications services, and to ensure the quality of such services, no differentiation in requirements or exceptions are provided to small businesses.

N.J.A.C. 14:10-9 will affect public pay telephone service (PPTS) providers, some of which may be "small businesses" as that term is defined in the Regulatory Flexibility Act. The rules do not impose additional data gathering burdens on PPTS providers, but require that readily available information, such as a description of the person responsible for receiving customer complaints, must be submitted to the Board on a periodic basis. The only costs pertaining to these rules would be those associated with the photocopying and mailing of existing data. It is not anticipated that PPTS providers would require professional services to comply with the rules. Because the data to be submitted represents the minimum amount of information necessary to enable the Board to properly carry out its regulatory responsibilities, the Board has made no distinction between PPTS providers based on their size.

N.J.A.C. 14:10-10 affects competitive telecommunications carriers, none of which are "small businesses" as that term is defined in the Regulatory Flexibility Act. The carriers affected either employ more than 100 people or are based outside of New Jersey.

The majority of the requirements set forth in N.J.A.C. 14:10-11, as described in the Summary above, are the same as the FCC rules regarding slamming. Telecommunications service providers (TSPs) may experience an increase in solicitation costs due to compliance with these rules. Although the rules may result in the hiring of additional personnel to ensure compliance with the regulations and to carry out the duty of training staff in the contents of the rules, it is unlikely that professional services will be needed. However, in addition to protecting the public, the slamming rules protect the TSPs from unethical practices by other TSPs. In addition, the public interest in assuring that only authorized switches of telephone service providers occurs outweighs any minimal burden placed on TSPs by these rules. Accordingly, exceptions to these requirements for small businesses have not been proposed.

Smart Growth Impact

The Board anticipates that the proposed readoption with amendments of chapter 10 will have no impact on either the achievement of smart growth or the implementation of the State Development and Redevelopment Plan. The State Plan is intended to "provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions" and to "identify areas for growth, agriculture, open space conservation and other appropriate designations." N.J.S.A. 52:18A-199a. Smart growth is based on the concepts of focusing new growth into redevelopment of older urban and suburban areas, protecting existing open space, conserving natural resources, increasing transportation options and transit availability, reducing automobile traffic and dependency, stabilizing property taxes, and providing

affordable housing." These rules apply uniformly Statewide and the Board does not expect that they will affect the location of future development.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

CHAPTER 10 [TELEPHONE] TELECOMMUNICATIONS

SUBCHAPTER 1. General Provisions and definitions for chapter 10

14:10-1.1 Applicability

(a) This chapter applies to the following:

1. A public utility, as defined at N.J.S.A. 48:2-13a, that operates a telephone system;
2. A telecommunications carrier, as defined at N.J.A.C. 14:10-1.2;
3. An aggregator;
4. Providers of adult-oriented information access telephone service providers; and
5. Any person that is subject to the numbering guidelines of the FCC. See number reclamation provisions at N.J.A.C. 14:10-3.

(b) This chapter applies only to intrastate telecommunications service. Interstate telecommunications service is governed by the Federal Communications Commission (FCC).

(c) All extensions of telephone service, including service connections, shall be governed by the provisions for extensions set forth at N.J.A.C. 14:3-8.

(d) The act of any person, as defined at N.J.A.C. 14:10-1.2, acting as an agent or representative of an entity that is subject to this chapter, shall be deemed to be the act of that entity.

14:10-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this chapter can be found at N.J.A.C. 14:3-1.1.

"Access code" means a sequence of numbers that, when dialed, permits a telephone caller to obtain a connection to the carrier associated with that code. All access codes take the form of 10XXX or 101XXXX, with X meaning any numerical value from 0 to 9.

"Adult-oriented information-access telephone service" means a telephone service to which a customer can subscribe, through which, for a charge, sexually explicit messages are furnished to a caller.

"Aggregator" means a person, as defined at N.J.A.C. 14:3-1.1, that, in the ordinary course of its business, makes PPTS, as defined in this section, available to the public or to transient users, and that provides operator-assisted services through either

automated store and forward technology or through an operator service provider. This term includes but is not limited to hotels, motels, hospitals, and universities.

"Alternate operator service provider" or "AOS" means a carrier that leases lines from a LEC and/or an IXC, and uses the leased lines and its own operators to provide operator-assisted services for intrastate calls. An AOS is a type of OSP, as defined in this section.

"Automated intervention" means automated store and forward technology, through which the placement or charging of a telephone call is provided without human involvement in each call or charge.

"Basic service" means up to three lines of dial tone service provided to a customer with no lines in service.

"Branding" means verbal identification of the OSP prior to connection of a call and starting the timing of the call for charging purposes.

"Carrier" or "telecommunications carrier" means a telephone utility, including an ILEC, an IXC, or a CLEC; and/or a reseller, as those terms are defined in this section.

"Clear" means, in regards to a problem or request for assistance with telecommunications service, to resolve the problem or satisfy the request.

"Competitive local exchange carrier" (CLEC) means a local exchange telecommunications carrier, other than an incumbent local exchange carrier, to which the Board has granted authority to provide telecommunications services.

"Competitive telecommunications services" means any telecommunications service that the Board has determined to be competitive pursuant to N.J.S.A. 48:2-21.19.

"Correctional facility" means an institution, including a prison, jail or detention center, operated by a governmental entity, which is dedicated to the treatment, rehabilitation or confinement of criminal offenders.

"Customer provided pay telephone service" or "CPPTS" means telephone service furnished to the public, for a per-use fee, by a private entity that is a reseller.

"Customer provided pay telephone service provider" or "CPPTS provider" means the customer of record that purchases a CPPTS line and is responsible for the pay telephone instrument.

"Exchange access" means the provision of exchange services for the purpose of originating or terminating interexchange telecommunications. Such services are provided by facilities in an exchange area for the transmission, switching or routing of interexchange telecommunications that originate or terminate within the exchange area.

"Facilities-based carrier" means a carrier or TSP that owns some portions of the telephone distribution system, and that uses its own facilities for some portion of its provision of telecommunications service. Examples of facilities are local loop, transport and switches.

"FCC" means the Federal Communications Commission, which is a United States government agency.

"Incumbent local exchange carrier" (ILEC) means a facilities-based telecommunications carrier with a Board-approved tariff in effect prior to February 8, 1996, which authorizes the carrier to provide telecommunications services in New Jersey. An ILEC may also operate as an OSP.

"Information provider" means an entity that uses LEC or IXC telecommunications services to provide information to callers for a fee, for example, adult-oriented information-access telephone services to provide sexually explicit messages.

"Interexchange carrier" or "IXC" means a carrier, other than a local exchange carrier, that is authorized by the Board to provide long-distance telecommunications services.

"InterLATA toll call" means a toll call that originates in one LATA and terminates in another.

"IntraLATA toll call" means a toll call that originates and terminates in a single LATA.

"Intrastate telecommunications service" means a telecommunications service which remains within the boundaries of New Jersey, regardless of the specific routing of the call.

"LATA" or "Local Access Transport Area" means a geographic area, outside of which a Bell Operating Company does not carry telephone calls. (See *United States v. Western Electric*, 569 F. Supp. 990 (D.D.C. 1983).)

"Local call" means a call within a local calling area, as defined in this section.

"Local calling area" is a group of exchange areas in which an end-user can call without an extra fee, over and above the monthly local calling fee. The local calling area is delineated in a LEC's tariff. A local calling area is a subset of a LATA.

"Local exchange carrier" or "LEC" means an ILEC or a CLEC, as defined in this section.

"Operator-assisted services" means services that assist callers in placing or charging a telephone call, either through live intervention or automated intervention.

"Operator service provider" or "OSP" means a facilities-based telecommunications carrier that provides operator-assisted services.

"Presubscribed OSP" means an OSP that a customer has chosen to provide operator assisted services for intrastate calls from a telephone that the customer owns, so that an end-user can place a call from the telephone using the OSP, without having to dial an access code.

"Primary interexchange carrier" or "PIC" means an interexchange carrier, as defined in this section, that a customer has chosen to provide interexchange service, so that the customer can place a toll call from its landline using the PIC without having to dial an access code.

"Public pay telephone service" or "PPTS" means telephone service provided in an area used by the transient public, for public use for a per-use fee. This term includes customer provided pay telephone service, as defined in this section.

"Public pay telephone service provider" or "PPTS provider" means a person, as defined at N.J.A.C. 14:3-1.1, that provides PPTS.

"Rate" means the total charge to a caller for the completion of a call utilizing operator-assisted service, including all surcharges, premises-imposed fees and other charges, collected from the caller.

"Reseller" means a non facilities-based carrier that leases lines or other physical infrastructure from a facilities-based carrier for use in providing telecommunications services to customers.

"Retail customer" is an end user that purchases telecommunications services for their own use and not for resale.

"Slamming" means an unauthorized change of a customer's primary interexchange carrier or the failure to execute an authorized change in a customer's primary interexchange carrier.

"Splashing" means the practice of a carrier calculating the charge for a long distance call initiated at a public pay telephone based on the location from which the long distance carrier picks up the call, rather than on the call's point of origin. Splashing typically occurs when a PPTS call is routed to a call center, and the carrier picks up the call from the call center. Then the carrier charges the caller as if the call originated at the call center, rather than at the public pay telephone. If the call center is located at a substantial distance from the PPTS where the call originated, the carrier's charges could be substantially increased by the use of the call center rather than the initiation point of the call.

"Subscriber" means a telephone customer of a LEC or IXC.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

"Telecommunications service provider" or "TSP" has the same meaning as "carrier," as defined in this section.

"Telephone utility" means a public utility, as defined at N.J.A.C. 14:3-1.1, as well as any person, as defined at N.J.A.C. 14:3-1.1, that provides telecommunications services to the public for a fee.

"Toll call" means a call that terminates outside the local calling area in which the call originated. The local calling area is defined in the LEC's tariffs filed with and approved by the Board.

"Toll service" means the provision of toll calls.

"Type of service" means the category of telephone services provided to customers by local exchange or interexchange carriers. Examples of such types of service include, but are not limited to, toll, WATS (Wide Area Telephone Service), toll free, operator services, channel services, virtual private networks and optional services.

"Wholesale customer" means a person that purchases telecommunications services for resale to others.

14:10-1.3 Recordkeeping, general provisions

(a) Notwithstanding N.J.A.C. 14:3, all records that a telecommunications carrier is required to keep under this chapter shall be preserved for the following minimum periods, as applicable:

1. Eighteen months if the record relates to wholesale customers;
2. Six years if the record is necessary to ensure compliance with requirements for back billing of retail customers at N.J.A.C. 14:10-2.2;
3. Five years if the record is required under N.J.A.C. 14:10-1A.11, service quality reporting; and
4. Three years if the record is of a verification of a TSP switch authorization in accordance with N.J.A.C. 14:10-11.

(b) Each regulated entity shall make all records required under this chapter available to Board staff upon request.

(c) Each telephone utility or telecommunications carrier that maintains a commercial website shall provide the Board with a link to its website. The site shall include the carrier's tariff and tariff revisions as filed with the Board.

(d) Board staff may investigate a carrier's compliance with this chapter and/or with its tariff at any time, and may suspend a tariff if it finds noncompliance with any Board order or rule, or any other applicable law.

SUBCHAPTER [1. SERVICE] 1A. Telephone utilities

[14:10-1.1 (Reserved)] 14:10-1A.1 Applicability

This subchapter applies to telephone utilities, as defined at N.J.A.C. 14:10-1.2.

14:10-1A.2 General provisions

(a) In addition to the requirements in this chapter, telephone utilities are subject to all applicable requirements of the Board's rules for all utilities at N.J.A.C. 14:3.

(b) A telephone utility shall make available on its website maps showing exchange, base rate area and zone boundaries (if applicable). The maps shall be of sufficient size and detail so that most customer locations can be determined and mileage or zone charges quoted. The telephone utility shall provide the maps to Board staff at the Board's offices upon request.

(c) A telephone utility shall, when requested, furnish appropriate information concerning location of underground facilities, as necessary to comply with the Board's rules for protection of underground facilities at N.J.A.C. 14:2.

[14:10-1.2] 14:10-1A.3 Rate and special charges information

(a) Upon the request of any customer or applicant, each telephone utility shall provide an explanation of the rates, charges and provisions applicable to the service furnished or available to such customer or applicant, and shall take reasonable steps to provide any information and assistance necessary to enable the customer or applicant to obtain the most economical communications service conforming to the needs of such customer or applicant.

(b) The customer or applicant shall be advised as to alternative services available to meet [the] their communications requirements [of said customer or applicant] in accordance with N.J.A.C. 14:11-7.4. Such information may include printed explanations of alternative services and rates.

(c) When requested, the telephone utility shall notify the customer or applicant of the minimum installation and service connection charge to be applied to the bill of such customer or applicant prior to undertaking any action and shall inform the customer or applicant of the estimated initial bill for local service.

(d) [(b) The customer shall be provided with an estimate of the charges where] If special charges not specifically set forth in a telephone utility's tariff are levied on the basis of actual cost for such items as extraordinary construction, maintenance or replacement

costs or expenses, overtime work at the customer's request and special installations, equipment and assemblies [for which the tariff does not prescribe a rate.] , the telephone utility shall provide the customer with an estimate of these charges. This estimate need not be furnished if the customer specifically requests that the special equipment and services be provided before the charges for those services and equipment are available.

[14:10-1.3] 14:10-1A.4 Business offices

(a) - (c) (No change.)

[14:10-1.4 Public information]

(a) Access to the following information shall be made available at the business office upon request:

1. Maps showing exchange, base rate area and zone boundaries (if applicable), of sufficient size and detail from which most customer locations can be determined and mileage or zone charges quoted;
2. Information concerning plans for major service changes in the area served by the business office.]

[14:10-1.5] 14:10-1A.5 Directories

(a) (No change.)

(b) Upon [issuance] publication, the telephone utility shall distribute a copy of each directory [shall be distributed] to all customers within the service area covered by the directory and shall furnish [a copy] two copies of each directory [shall be furnished] to the [board] Board's Secretary.

(c) - (d) (No change.)

(e) The opening pages of the directory shall contain a conspicuous notice advising customers that should the [company] telephone utility fail to satisfactorily resolve telephone service or billing problems, customers may refer their problems to the board. The address [of], customer service telephone number and the website for the [board] Board shall be shown.

(f) The directory shall contain instructions concerning placing local and long distance calls, calls to repair and directory assistance services, and location and telephone numbers of telephone [company] utility business offices as may be appropriate to the area served by the directory. Rate schedules or representative rates for toll calls shall be included.

(g) (No change.)

(h) Each telephone [company] utility shall list its customers in the directory assistance directory as necessary for the directory assistance operators to provide the requested telephone numbers (except those not published at customer request) based on customer name and location to minimize "not found" numbers.

(i) - (k) (No change.)

[14:10-1.6] 14:10-1A.6 Held applications

(a) [During such period of time as the] When a telephone utility may not be able to supply [regular telephone] basic service to an applicant for service within five working days or to upgrade an existing customer within 30 days or to provide special communication service within a reasonable period after the date the applicant desires service, the telephone utility shall hold the application, and shall keep a record by business office showing the name and address of each applicant for service, the date of application, the date service was desired, and the class and grade of service applied for, together with the reason for the inability to provide the new or higher grade service to the applicant.

(b) When, because of shortage of facilities, a telephone utility is unable to supply [main telephone service,] basic service on dates requested by applicants, priority shall be given to furnishing those services which are essential to public health and safety. In cases of prolonged shortage or other emergency, the Board may require establishment of a priority plan subject to [its] Board staff's approval for [clearing held orders] fulfilling held applications, and may request periodic reports concerning the progress being made.

(c) (No change.)

[14:10-1.7] 14:10-1A.7 Customer complaints and trouble reports

(a) - (b) (No change.)

(c) Except when unavoidable, each telephone utility shall keep all commitments to customers [shall be kept]. Every reasonable effort shall be made to notify customers of unavoidable changes. If unusual repairs are required, or other factors preclude [cleaning] clearing of reported trouble promptly, reasonable efforts shall be made to notify affected customers.

[14:10-1.8] 14:10-1A.8 Public telephone

In each exchange the telephone utility shall have at least one [coin] pay telephone available to the public at all hours, prominently located and properly maintained, equipped with dialing instructions, and lighted at night. Public telephones are also subject to N.J.A.C. 14:10-9.

[14:10-1.9] 14:10-1A.9 Adequacy of service

(a) Each telephone utility shall make traffic studies and maintain records as [required] necessary to determine [that sufficient] whether its equipment and [an adequate] operating force are [provided] sufficient to provide adequate service at all times.

(b) Each telephone utility shall employ recognized [procedures] industry best practices to determine the adequacy of service capacity provided for customers.

(c) Where service capacity is found to be inadequate, the telephone utility shall immediately institute corrective measures to return that service to an adequate condition.

(d) (No change.)

(e) A telephone utility shall not connect more customers on any line than are contemplated under the grade of service for which the customers on the line are charged.

[14:10-1.10] 14:10-1A.10 Service quality standards

[(a) These standards establish service levels which should generally be provided by a telephone utility. Failure to attain these levels does not by itself indicate poor service and the liability of the telephone utility to its customers or other persons using its facilities for any such failure shall be governed by the applicable provisions of its tariff. Each telephone utility shall make measurements to determine the level of service for each item included in these standards. Each telephone utility shall provide the Board or its staff with the measurements required in this section, and summaries thereof, for any of the items included herein on request of the Board or its staff. Records of these measurements and summaries shall be retained by the utility as specified by the Board in and monthly reports on all service measurements may be required by the Board. When a utility fails to meet any of the minimum service levels listed below in an appropriate reporting entity for three consecutive months, the service data for the standard not met in that entity shall be reported to the Board].

(a) This section establishes service quality standards that a telephone utility shall meet. These standards apply without exception, regardless of seasonality, weather, work stoppage, accident, sabotage, acts of God or nature, or any other reason.

(b) [The following are the minimum service levels referred to in (a) above.] A telephone utility shall meet the following service quality standards regarding installations of service:

[1. Installation of service:

- i. Seventy-five] 1. Eighty-eight percent of [regular] basic service installations shall be completed within five working days after the utility receives the request for service, unless a later date is requested by the applicant [requesting. The interval commences with the receipt of the application.];

- [ii. Eighty-eight] 2. Ninety-six percent of the commitments made to customers[, with the exception of customer-caused delays,] as to the date of installation of [regular] basic service[,] shall be met, unless the customer causes a delay[.]; and
- [iii. A regrade request shall be filled no later than 30 days after the customer has made] 3. An application for a regrade (that is, a change to a different grade of service) shall be filled within 30 days after the utility receives the regrade request, except where the customer requests a later date. In the event the telephone utility is unable to [so fill such an order,] meet this deadline, the utility shall notify the customer [will be advised and furnished] of the date or approximate date the order will be filled.

[2. Operator] (c) A telephone utility shall meet the following requirements regarding operator handled calls: [Each telephone utility shall maintain adequate personnel to provide an average operator answering performance as follows, measured on a monthly basis:]

- [i. Eighty-five] 1. Eighty-eight percent of repair service calls that the telephone utility receives shall be answered within 20 seconds [or equivalent.];
- [ii.] 2. Eighty-five percent of toll assistance operator calls (that is, toll calls assisted by an operator) shall be answered within [10] ten seconds [or equivalent.];
- [iii.] 3. Seventy-eight percent of directory assistance calls shall be answered within [10] ten seconds [or equivalent.]; and
- 4. Eighty-three percent of calls to the utility's business office shall be answered within twenty seconds. [iv. An] For the purposes of this section, an "answer" shall mean that the operator or representative is ready to render assistance and/or ready to accept the information necessary to process the call. An acknowledgment that the customer is waiting on the line shall not constitute an "answer."

[3. Dial service: Sufficient central office capacity and equipment shall be provided to] (d) A telephone utility shall meet the following requirements regarding dial service, measured as statewide monthly averages:

- [i.] 1. Ninety-[five]eight percent of dialed local calls shall be completed without the caller encountering an all trunk busy or equipment irregularity[.];
- [ii.] 2. Ninety-five percent of originating direct [distance-dialing]-dialed toll calls shall reach the toll network without experiencing blockage or failure[.]; and
- 3. Ninety-eight percent of switching offices shall supply dial tone within three seconds.

[4. Customer trouble reports: The] (e) Each telephone utility shall ensure that its statewide average rate of customer trouble reports to the utility shall not [be in excess of 8] exceed eight complaints per 100 [telephones] lines per month.

(f) Each telephone utility shall ensure that it meets the following requirements for clearing trouble reports:

- 1. Seventy-five percent of out of service trouble reports shall be cleared within 24 hours after the utility receives the report; and

2. Eighty percent of commitments negotiated with customers to clear troubles shall be met.

[5. Transmission requirements:] (g) All customer loops shall meet the industry best practices for resistance [design standards and trunk facilities shall conform to the] and transmission design. [factors required for meeting the objectives of direct distance dialing.

(c) The following refer to reports and records required in (a) above and the standards set forth in (b) above:

1. Record keeping and reporting are to be in accordance with the following table.

Service Measure	Reporting Unit and Minimum Reporting Size
Held Primary Service Orders	Plant Installation District or Business Office
Installation Commitments	Plant Installation District or Business Office
Held Regrade Service Orders	Plant Installation District or Business Office
Toll Assistance Operator Answering Time	Traffic Office handling toll assistance calls--average business day call volume of 2,000 or more
Directory Assistance Operator Answering Time	Traffic Office handling directory assistance calls--average business day call volume of 2,000 or more.
Dialed Local Calls	Central Office entity
Direct Distance Dialing	Toll Recording Center or Area
Customer Trouble Reports	Plant Maintenance Center—Central Office under 1,000 lines need not be included in performance reports.]

(h) Customer complaints to the Board concerning a telephone utility's service shall not exceed eight complaints per ten thousand lines per month, Statewide.

14:10-1A.11 Service quality reporting

(a) Each telephone utility shall take measurements of its performance in relation to the standards in N.J.A.C. 14:10-1A.10, and shall compile summaries of the measurements.

(b) Each telephone utility shall retain records of the measurements and summaries required under this section for five years, and shall provide the measurements and summaries to Board staff as follows:

1. Upon request of Board staff;
2. In a quarterly report; and
3. If a telephone utility fails to meet a service standard for three consecutive months, in accordance with (h) and (i) below.

(c) Each telephone utility shall report its performance in relation to these standards on a monthly average (arithmetic mean) basis.

(d) For the purpose of reports submitted under this section, each telephone utility shall provide statewide totals of its performance measurements relating to all quality service standards set forth at N.J.A.C. 14:10-1A.10.

(e) In addition to the Statewide totals required under (d) above, each telephone utility shall sort and/or aggregate its performance measurements regarding the following service quality standards by the applicable reporting unit described below:

1. The additional reporting unit for measurements relating to the standards for installation of service under N.J.A.C. 14:10-1A.10(b), and for trouble reports under N.J.A.C. 14:10-1A.10(e) and (f), shall be the geographic area for which a second level manager in charge of installation and maintenance is responsible. For the purpose of this section, a second level manager is a person supervising one or more first level managers, where first level managers are supervisors of crews actually performing work on telephone physical plant;
2. The additional reporting unit for measurements relating to the standards for operator handled calls at N.J.A.C. 14:10-1A.10(c)1 through 3 shall be the call center. The reporting unit for measurements relating to the standards for operator handled calls at N.J.A.C. 14:10-1A.10(c)4 shall be the telephone utility's business office; and
3. The additional reporting unit for measurements relating to the standards for dial service at N.J.A.C. 14:10-1A.10(d) shall be the geographic area for which a second level manager in charge of switching is responsible.

(f) [2. Reports on all service measures except held orders] All reports submitted under this section shall set forth the following:

- [i.] 1. Reporting unit name, and further identification if name does not convey geographic location;
- [ii.] 2. Service [measure, level, and] quality standard being measured;
3. Results of measurements, and summaries of the results; and
4. [months,] Months being reported on[;].
- [iii. Cause of performance at the reported level: For installation commitments and customer trouble reports, indicate locations affected if cause is localized within a reporting unit;
- iv. Corrective action and completion date.
3. Reports on held primary basic and regrade service orders shall set forth the following:
 - i. Reporting unit name and further identification if name does not convey geographic location;
 - ii. Number of held orders or stations for each month of the quarter.
4. Data shall be compiled monthly and reported quarterly.]

(g) If any service quality standard set forth in this subchapter has not been met, the report shall include, in addition to the information required at (f) above, the following information:

1. The cause of performance at the reported level;
2. If the standard not met involved an installation commitment or customer trouble report, the specific reporting units affected;
3. Corrective action taken by the utility; and
4. Completion date, or expected completion date, of the corrective action.

(h) If a telephone utility fails to meet one or more service quality standards for three consecutive months, the telephone utility shall submit to the Board the measurements and summaries required for that service quality standard. The utility shall submit this information without the need for a request from the Board. The submittal shall address all of the standards not met in that reporting entity during the three consecutive months.

(i) The submittal required under (h) above shall be made no later than five calendar days after the end of the third consecutive month of noncompliance. Failure to submit as required by (h) above shall be a violation. It shall not be a defense to Board enforcement action that the Board did not request the telephone utility to submit the information.

14:10-[1.11] 1A.12 Measuring devices

(a) [When] This section governs the mechanical and/or electronic measuring and record keeping devices [are] used at [the] a telephone utility's premises in connection with telecommunication service[, the measured data and related customer records from which the customer's bills are prepared shall show:

1. Identifying number or means to determine readily the customer's name, address and service classification;
2. Measuring device readings;
3. Date of reading;
4. Multiplier or constant, if used].

(b) As nearly as practicable, measuring devices covered by this section shall be read at intervals [to] that correspond to customer billing periods.

(c) All measuring and/or record keeping devices used to record data and prepare customers' bills shall be in good mechanical and electrical condition, shall accurately count the item being measured, shall be accurately read and shall not involve approximations. [All such devices shall accurately perform the following:

1. For message rate service, the device shall accumulate the number of message units used.
2. For toll service, when in addition to counting the calls, it is necessary to time the calls, the device shall show the number of calls and the chargeable time involved in each call; and
3. Where the measuring equipment provides coded information that is used to automatically prepare customer bills, accurate interpretation of such coded information is required.]

(d) A measuring and/or record keeping device shall display measurements in the categories and formats required to enable Board staff to easily evaluate the utility's compliance with this chapter, and in particular with the service quality standards at N.J.A.C. 14:10-1A.10.

[14:10-1.12] 14:10-1A.13 Inspections, tests and maintenance

(a) (No change.)

(b) The telephone utility shall monitor the actual transmission performance of the telephone utility's system [shall be monitored in order to determine if the established objectives and operating requirements are met] , and shall ensure that the utility is in compliance with this chapter. This monitoring function [consists] shall consist of circuit order tests prior to placing trunks in service, routine periodic trunk maintenance tests, tests of actual switched trunk connections, periodic noise tests of a sample of customer loops in each exchange, and special transmission surveys of the system.

(c) (No change.)

[(d) Each telephone utility shall maintain or have access to the necessary facilities, instruments, and equipment for testing its measuring and record keeping equipment and shall adopt appropriate practices for the periodic testing of such equipment.]

[(e) A] (d) Each telephone utility shall keep a record of all measuring device tests and adjustments, and data sufficient to allow checking of the results [shall be recorded]. Such record shall include the identifying number of the measuring device, its type, the data and kind of test, and the results of each test.

[(f) Maintenance shall include] (e) Each telephone utility shall perform regular maintenance, keeping all plant and equipment in a good state of repair consistent with safety and adequate service performance. Broken, damaged, or deteriorated parts which are no longer serviceable shall be repaired or replaced. Adjustable apparatus and equipment shall be readjusted as necessary when found by preventive routines or fault location tests to be in unsatisfactory operating condition. Electrical faults, such as leakage or poor insulation, noise induction, cross-talk or poor transmission characteristics, shall be corrected to the extent practicable.

[(g) A telephone utility shall not connect more customers on any line than are contemplated under the grade of service for which the customers on such line are charged.]

(h) Telephone utilities shall, when requested, furnish appropriate information concerning location of underground facilities, in order to prevent any interruption of service to telephone customers. Nothing in this rule is intended to affect the responsibility, liability, or legal rights of any party under applicable laws or statutes.]

14:10-[1.13 Service] 1A.14 Prevention and reporting of service interruptions

(a) [Appropriate] Each telephone utility shall take all appropriate measures [shall be taken] to minimize service interruptions. Each telephone utility shall make provisions to meet emergencies resulting from failure of power, sudden and prolonged increases in traffic, absences of employees or from fire, storm, natural disasters, attacks or similar

contingencies. Each telephone utility shall inform its employees as to procedures to be followed in the event of such contingencies in order to prevent or mitigate interruption or impairment of service.

(b) Each central office, and each remote central office that carries inter-community calls without routing them to the main central office, shall contain sufficient battery reserve to keep the office operational until auxiliary power can be placed into service.

(c) In exchanges exceeding 5,000 lines, the telephone utility shall install a source of permanent auxiliary power [shall be installed].

(d) A utility shall inform Board staff immediately, by telephone at a telephone number posted for the purpose on the Board's website, of any service interruption. The utility contact person shall:

1. Explain the cause of the service interruption;
2. Describe the measures the utility is taking to remedy the problem;
3. Provide Board staff with the telephone number of a utility contact that Board staff can reach at all times in order to monitor the situation; and
4. Keep Board staff apprised of the situation, and especially of any changes in the situation, through telephone contact hours, until all customers are back in service.

(e) Each utility shall submit to Board staff all reports submitted to the FCC in accordance with 47 CFR Part 63, Notification of service outage.

14:10-[1.14] 1A.15 Construction

(a) [Telephone plant shall be] Each telephone utility shall ensure that all of its plant and facilities are designed, constructed, maintained, and operated in accordance with provisions of the current National Electrical Safety Code, the National Electrical Code[, and such other appropriate regulations as may be prescribed].

(b) Telephone utilities shall not provide switching service to lines or facilities that do not meet [standard] technical [criteria and] best management practices (BMPs) for the industry, including the input/output criteria of the regional Bell operating company and the telephone utility supplying switching service. Each telephone utility shall eliminate [nonconforming] switching services that do not conform to these practices.

[14:10-1.15 Preservation of records

All records required to be kept shall be preserved for the period of time specified in the current edition of Part 42 of the Rules and Regulations of the Federal Communications Commission, entitled "Preservation of Records of Communication Common Carriers".]

[14:10-1.16] 14:10-1A.16 Adoption by reference of the Uniform System of Accounts

[(a) The Board adopts by reference] All carriers that are required by the FCC to use the Uniform System of Accounts for Telephone Companies [that has been promulgated by the Federal Communications Commission] found in 47 CFR Part 32 [of the Commission's Rules and Regulations, as well as all present and subsequent amendments, revisions, deletions and corrections which the Federal Communications Commission may adopt insofar as they relate to telephone utilities subject to the jurisdiction of the Board and are in accordance with the Board's policies and procedures] shall use that system of accounts for intrastate reporting purposes. The FCC Uniform System of Accounts for Telephone Companies is incorporated herein by reference, as amended and supplemented.

[(b) For good cause shown, for example, where a telephone company obtains a waiver from the Federal Communications Commission from compliance with that commission's Uniform System of Accounts for Telephone Companies, a telephone company may obtain an exemption from (a) above.

14:10-1.17 Telegraph company registration

(a) Every telegraph company operating within New Jersey shall register with the Board the names and addresses of all lessees and users of tickers, teleprinters and other terminal equipment located within the State of New Jersey and used in connection with the following classes of telegraph service:

1. Leased facilities, other than facilities for the press, with which the lessee disseminates racing news;
2. Leased facilities used by the press to send or receive racing news;
3. Sports ticker service, a service where the telegraph company originates the information;
4. Stock and commodity tickers.

(b) If changes in the location of registered equipment occur, the Board shall be notified within 30 days of such changes.

(c) The Board determines that the following facilities are exempt from registration under the terms of the statute:

1. Means of communication between offices of telegraph company;
2. Means of communication, including patron's tie-lines, between offices of the telegraph company and offices of recognized general commercial customers.

(d) The list of registrations required in this Section shall be available to the Attorney General, county prosecutors and municipal police departments.

14:10-1.18 Number reclamation notice

(a) The following words and terms, as used in this section and in N.J.A.C. 14:10-1.19, shall have the following meanings:

"Central Office Code" or "NXX code" means the sub-numbering plan area code in a telephone number, consisting of the fourth, fifth, and sixth digits in a 10-digit telephone number.

"Central Office Code (NXX) Assignment Request and Confirmation Form--Part 4" or "Part 4" means that form, under the FCC required Industry Numbering Committee's Central Office Code Assignment Guidelines (Guidelines), and as described in the FCC's First Numbering Resource Optimization Order released on March 31, 2000, that within six months of the requested effective date of newly obtained NXX codes, carriers are required to submit to the North American Numbering Plan Administrator (NANPA) that the code has been placed in service as that term is further defined by the FCC in its March 31, 2000 Order (FCC NRO Order of 3/31/00--P233).

"Reclamation" means the process through which code holders are required to return numbering resources to the NANPA.

(b) When the Board receives from the NANPA the list of central office code holders which have failed to file the Part 4 Form within the six month time period following the date the new NXX codes become effective in the Local Exchange Routine Guide (LERG), or the date required by the applicable Guidelines, Board staff shall send written notice to the code holders on the past-due list to again remind them that their Part 4 confirmations are overdue.

(c) Within 14 days of receiving the notice under (b) above, the code holders shall provide the Board with written proof that the delinquent NXX codes have been activated and the delinquent NXX codes are serving end-users. The code holders shall submit to the Board information with the Part 4 Form regarding how many end-users have been assigned numbers in the NXX code. Code holders unable to activate the NXX codes subject to reclamation may request an extension by following the procedure set forth in N.J.A.C. 14:10-1.19.

(d) In cases where the Board does not receive a Part 4 confirmation from the code holders or a request for an extension, the NXX codes are subject to immediate reclamation.

(e) Code holders shall ensure that the NANPA and the Board have current contact information on file, including contact name, telephone number, fax number, street address and electronic mail address.

14:10-1.19 Reclamation extensions

(a) Code holders seeking an extension of the deadline for submission of Part 4 Forms shall submit their requests to the Board in writing. Their request shall:

1. Include the reason for the delay in activating the NXX code;
2. Indicate when the NXX codes will be activated;
3. Specify the duration of the extension being sought;
4. Explain whether any third party has contributed to the code holder's inability to activate the NXX codes within the six months following the date the NXXs were assigned;
5. Specify the relevant NXX codes designated by the NANPA and the rate center;
6. Note whether prior extensions have been granted for the NXX codes;
7. Indicate the current Part 4 deadline; and

8. Explain whether the code holder has additional numbering resources in the same rate center.

(b) Upon having considered the written submissions by the code holder requesting an extension, the Board may grant Part 4 extensions of up to 90 days from the date the Part 4 Form was initially due. Such an extension shall only be granted upon verifiable proof that the code was not activated due to reasons beyond the carrier's control, such as delay in interconnection with another carrier or delay by a single customer which is to be assigned a full NXX code. Additional extensions shall not be granted.

(c) Every code holder which receives an extension shall submit a Part 4 confirmation before the end of the extension period. NXX codes are subject to immediate reclamation at the end of the extension period unless the required Part 4 certification is received from the code holder.]

SUBCHAPTER 2. PAYMENTS FOR SERVICE

14:10-2.1 [Bills for service] Applicability

(a) This subchapter applies to any bill for telecommunications service, whether presented to a customer by a telephone utility or a reseller.

(b) In addition to the requirements of this subchapter, a telephone utility is subject to requirements for billing set forth in the Board's rules for all utilities at N.J.A.C. 14:3.

14:10-[2.1] 2.2 [Bills for service] Contents of bills, back billing

(a) [The] Regardless of whether a bill is for retail or wholesale telecommunications services, each customer's bill shall include [as applicable] the items listed below, except if the customer's calling plan or package of services makes an item inapplicable:

1. - 5. (No change.)
6. A separate line item, calculated on a monthly basis, for basic residential local telephone service (BRLTS), as defined at N.J.A.C. 14:3-[3.17(a)] 7.17(a), and a separate line item, calculated on a monthly basis, for nonbasic residential telephone service, as defined at N.J.A.C. 14:3-3.17(a), if any[.]. Each line item shall be supported by a statement which reflects amounts due and payable before and after application of payment;
7. A separate line item, calculated on a quarterly basis, for each optional service provided, if any;
8. Total charges for intraLATA and interLATA toll calls, supported by an itemized list of the calls, and a statement of amounts due and payable before and after the customer's payment is applied;
9. Total nonrecurring charges for service and equipment, supported by a statement of amounts due and payable before and after application of payment;
10. - 13. (No change.)

(b) If a CLEC or ILEC has billed a customer at an incorrect rate, the CLEC or ILEC shall adjust the customer's subsequent bills, or "back bill" the customer, to make up for

difference between the incorrect rate billed and the correct rate, in accordance with (c) through (e) below.

(c) If the incorrect rate billed was higher than the correct rate, the telephone utility shall credit or refund the customer for the amount overcharged. The CLEC or ILEC shall refund or credit the full amount within the next two billing cycles after the incorrect billing was discovered or should reasonably have been discovered.

(d) If the incorrect rate billed was lower than the correct rate, the CLEC or ILEC shall allow the customer to repay the amount over a period no shorter than the time period for which the billing was incorrect, or the customer and the CLEC or ILEC may make other payment arrangements by mutual agreement.

(e) A telephone utility shall neither back bill a customer, nor refund or credit a customer, for incorrect billing that occurred more than:

1. For a wholesale customer, more than eighteen months prior to the month the billing error was discovered for a wholesale customer; and
2. For a retail customer, more than six years prior to the month the billing error was discovered.

(f) A telephone utility shall ensure that it retains all records necessary to ensure that it can comply with the back billing requirements in this section.

[14:10-2.2 Itemization of toll charges

All toll charges shall be itemized so as to facilitate the customer identifying his calls.]

14:10-2.3 Out of service refund

In the event the customer's service is interrupted otherwise than by the negligence or willful act of the customer and it remains out of service for a period of 24 hours or more after being reported to be out of service, appropriate adjustments or refunds to the customer's bill shall be made upon request of the customer [or automatically by the telephone utility if out of service beyond 72 hours]. If the customer's service is interrupted for more than seventy-two hours after being reported or discovered, the telephone utility shall adjust the customer's bill or provide a refund, regardless of whether the customer makes such a request.

14:10-2.4 Voluntary suspension

[Communications] Telecommunications service shall, at the request of a customer, be temporarily suspended. The suspension period may be for any period exceeding one month or such lesser period as specified in the tariff. Each telephone utility's tariff shall provide a suspension of service rate chargeable during such period.

Note: N.J.A.C. 14:10-2.5 was proposed for deletion as part of another rulemaking addressing issues of mass migration of telecommunications carriers, which was

published in the New Jersey Register on September 19, 2005. The Board anticipates adopting the earlier-proposed deletion prior to adopting this readoption.

SUBCHAPTER 3. NUMBER RECLAMATION

14:10-3.1 Number reclamation definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this subchapter can be found at N.J.A.C. 14:3-1.1 and N.J.A.C. 14:10-1.2.

“Guidelines” means, as regards NXX codes, the FCC Industry Numbering Committee’s Central Office Code Assignment Guidelines (COCAG); and as regards thousands-blocks, the Thousands-Block Pooling Administration Guidelines (TBPAG); both of which are incorporated herein by reference as amended and supplemented, and are available at www.atis.org/inc/docs.asp.

“NANPA” or “North American Numbering Plan Administrator” means the entity selected by the FCC to consult with and provide assistance to regulatory authorities and national administrators to ensure that numbering resources are used in the best interests of all participants in the North American Numbering Plan.

“NXX code” or “central office code” means the fourth, fifth, and sixth digits in a 10-digit telephone number. This term also means a group of ten thousand sequential telephone numbers, which all share the same fourth, fifth, and sixth digits. The NXX code denotes the exchange area within an area code. One central office code contains ten thousands-blocks, as defined in this section.

“Part 4 Form” means the FCC’s Central Office Code (NXX) Assignment Request and Confirmation Form-Part 4. It also means the TBPAG Thousands-Block Application Form – Part 4. The FCC requires each service provider to submit the Part 4 Form to the NANPA or pooling administrator to confirm that the numbering resources allocated to the service provider have been placed in service. The Part 4 Form is required by the Guidelines.

“Pooling administrator” means an entity or entities selected by the FCC to administer those thousands-blocks in an NXX code that are subject to pooling, in accordance with the Guidelines. The pooling administrator allocates thousands-blocks to service providers through thousands-block number pooling.

“Reclamation” means the process through which NANPA or a pooling administrator requires a service provider to return numbering resources in accordance with FCC requirements at 47 CFR §§52.7 through 20, and this subchapter.

“Service provider” means a person, as defined at N.J.A.C. 14:3-1.2, that receives numbering resources from the NANPA, the pooling administrator, or another entity

approved by the FCC. Examples of service providers are carriers, and persons who provide wireline or wireless telephone service, VoIP service, paging service, or similar services.

“Thousands-block” means a group of one thousand sequential telephone numbers, which all share the same central office code, as defined in this section, and which follow that central office code with a number from X000 to X999, where X is a value from 0 to 9.

“Thousands-block number pooling” means the process by which the pooling administrator allocates to service providers those thousands-blocks in an NXX code that are subject to pooling.

14:10-3.2 Number reclamation general provisions

(a) The Board may, in accordance with this section, investigate and determine whether a service provider has complied with FCC requirements regarding the use of numbering resources, set forth at 47 CFR §§52.7 through 20.

(b) Each service provider shall ensure that the NANPA, the pooling administrator, and Board staff have up-to-date contact information for the service provider at all times, including contact name, telephone number, fax number, street address and electronic mail address.

(c) When the Board receives from NANPA or a pooling administrator a list of service providers that have failed to file a Part 4 Form, as defined at N.J.A.C. 14:10-3.1, within the deadline set forth in the Guidelines, Board staff shall send written notice to the listed service providers, requiring submittal of the Part 4 Form to the Board.

(d) Within fourteen days after receiving the notice required under (c) above, the listed service providers shall submit to the Board all of the following:

1. A properly completed Part 4 Form;
2. Written proof that the service provider has activated all of its assigned numbering resources, so that the numbers are serving end-users or are programmed and ready to serve end-users. Examples of proof that Board staff may require include, without limitation, a list of telephone numbers assigned, or service orders; and
3. The number of end users to which the service provider has assigned numbers in the NXX code or thousands-block.

(e) A service provider may request an extension of the fourteen day deadline in (d) above in accordance with N.J.A.C. 14:10-3.3.

(f) If a service provider does not submit the information required under (d) above, and does not request an extension under (e) above, within the fourteen-day deadline, the service provider’s numbering resources shall be subject to immediate reclamation in accordance with the Guidelines.

(g) A service provider's numbering resources shall be subject to reclamation, after notice to the service provider, if either of the following conditions are met:

1. If Numbering Resources Utilization and Forecast (NRUF) reports provided to Board staff by NANPA show that a service provider has inventories that are greater than a six month supply; or
2. If NRUF reports show noncompliance with the requirements for sequential number assignments set forth at 47 CFR 52.15(j).

(h) If either of the conditions in (g) above are met, the Board may require the service provider to reduce contamination levels of its numbering resources in accordance with 47 CFR 52.15i(3), so as to facilitate any reclamation that is required.

14:10-3.3 Extension of Part 4 Form submittal deadline

(a) If a service provider meets the requirements of this section, Board staff shall grant an extension to the fourteen-day deadline set forth in N.J.A.C. 14:10-3.2(d) above. Board staff shall grant only one extension to the service provider, of up to ninety days from the date the service provider's Part 4 Form was initially due.

(b) To obtain an extension under this section, a service provider shall submit an extension request to Board staff in writing. The request shall include all of the following:

1. The reason for the delay in activating the service provider's numbering resources;
2. The projected date upon which the service provider will activate the numbering resources;
3. The duration of the extension requested;
4. The role played in causing the delay, if any, of the act or omission of a person other than the service provider during the six months after the service provider was assigned the numbering resources;
5. A list of the numbering resources that are the subject of the extension request;
6. A list of all of the numbering resources assigned to the service provider in the same exchange area as those that are the subject of the extension;
7. A copy of any prior extensions that the service provider has obtained from the Board; and
8. The service provider's current deadline under the Guidelines for placing the numbering resources that are the subject of the extension in service.

(c) Board staff shall grant an extension only upon a determination that the subject numbering resources were not placed in service due to reasons beyond the service provider's control. The Board shall not grant additional extensions to that service provider for the thousands-block that is the subject of the extension.

(d) If a service provider receives an extension and fails to file the information required under N.J.A.C. 14:10-3.2(d) by the end of the extension period, the service provider's numbering resources are subject to immediate reclamation at the end of the extension period.

SUBCHAPTER 4 [(RESERVED)] NON-FINANCIAL REPORTING REQUIREMENTS

14:10-4.1 General provisions for non-financial reporting

(a) This section sets forth the non-financial reporting requirements for ILECs, CLECs and resellers that provide intrastate telecommunications services to end-users in New Jersey.

(b) Each carrier shall submit to the Board an unredacted copy of its semi-annual FCC Local Telephone and Competition and Broadband Reporting Form 477, with the modifications detailed in this subchapter. The carrier shall submit the Form to the Board annually, within five days after the carrier files the Form with the FCC.

(c) Each carrier shall retain all background and supporting documentation used to develop the information required by this subchapter, and shall make the documentation and information available for inspection by Board staff upon request.

(d) A carrier may submit a confidentiality claim with regard to any information required under this subchapter, in accordance with the Board's OPRA rules at N.J.A.C. 14:1-12.

(e) Board staff may require an audit of some or all of the data collected from carriers on an annual basis.

(f) The annual report required under this section shall be filed on or before March 31 of each year.

(g) The submittal to the Board shall include all proprietary data required and provided to the FCC with respect to Wireline and Fixed Wireless Local Telephone service.

(h) The submittals required under this section shall be certified to be accurate by an officer of the carrier, and shall be submitted in both electronic and paper form to the Board Secretary, with a copy sent to the Director of the Division of Telecommunications.

(i) If a carrier is unable to obtain detailed actual data in order to fully comply with this section, or if compiling the required data would place an undue burden on the carrier, the carrier may instead submit detailed, statistically valid estimates of the required data, together with a request for an exemption from the actual data requirements for future filings. A request for an exemption shall contain a detailed description of the methodology used to estimate the data, and a comprehensive explanation of why actual data is not currently available, and why future collection of actual data would result in an undue burden to the carrier. If the actual data becomes available the carrier must notify the Board that estimated data is no longer required for future filings.

(j) If a carrier obtains an exemption under (h) above, and then revises its estimation methodology in a later filing, Board staff may, if necessary require the carrier to restate all previously estimated data using the revised estimation methodology in order to provide a valid comparison.

14:10-4.2 State-specific data for reports

(a) In place of Parts II and V of the carrier's FCC Form 477, the carrier shall submit the data required in this section.

(b) Voice telephone service provided to end user: The following data are required from ILECs and CLECs regarding voice telephone service provided to end users:

1. Total number of lines and channels that the ILEC or CLEC or its affiliate provides to end users:
 - i. Total number of voice-grade equivalent lines and voice grade equivalent wireless channels in service in each zip code;
 - ii. Of the lines and channels described in (a)1i above:
 - (1) Total number of residential lines by zip code;
 - (2) Total number of single line business lines by zip code; and
 - (3) Total number of lines for which each of the following is provided:
 - (A) Interstate long distance service without also providing intrastate long distance service;
 - (B) Intrastate long distance service without also providing interstate long distance service; and
 - (C) Both interstate and intrastate long distance service;
2. Total number of residential lines for which each of the following is provided:
 - i. Interstate long distance service without also providing intrastate long distance service;
 - ii. Intrastate long distance service without also providing interstate long distance service; and
 - iii. Both interstate and intrastate long distance service;
3. Total number of single line business lines for which each of the following is provided:
 - i. Interstate long distance service without also providing intrastate long distance service;
 - ii. Intrastate long distance service without also providing interstate long distance service; and
 - iii. Both interstate and intrastate long distance service;
4. For the lines and line equivalents described in (a)1i above, provide the total number provided over UNE loops that are obtained without UNE switching;
5. For the lines and line equivalents described in (a)1i above, provide the total number provided over UNE-Platform;
6. For the lines and line equivalents described in (a)1i above, provide the total number provided by reselling another carrier's service (including Centrex or channelized special access service);
7. For the lines and line equivalents described in (a)1i above, provide the total number provided over coaxial cable, fiber optic or any other facility type using VoIP or cable telephony; and
8. For the lines and line equivalents described in (a)1i above, provide the total number provided over fixed wireless at the end user premises.

(c) Voice telephone service provided to carriers that are not affiliated with the reporting ILEC or CLEC: The following data are required:

1. Total number of lines and channels provided under Total Service Resale arrangements;
2. Of the lines and channels listed in (c)1 above provide the following:
 - i. Total residential lines by zip code;
 - ii. Total single line business lines by zip code; and
3. Total number of lines and channels, by zip code, provided under other resale arrangements, such as resold Centrex or resold channelized special access service.

(d) UNE loops: Each wholesale telecommunications provider shall provide the following data regarding UNE loops that it provides to carriers that are not affiliated with it:

1. The total number of lines and channels provided under a UNE loop arrangement under which switching for the line is not provided, sorted by zip code;
2. The total number of lines and channels provided under a UNE loop arrangement under which switching for the line is also provided ("UNE-Platform").

(e) In addition to other information required in this section, the ILEC or CLEC shall submit any further information that Board staff deem necessary to fulfill the mandates of N.J.S.A. 48:2-21.16.

SUBCHAPTER 5 [REGULATION OF] COMPETITIVE TELECOMMUNICATIONS SERVICES

14:10-5.1 Scope

(a) [The rules in this] This subchapter [govern] governs the provision of competitive telecommunications services, as defined [below] in N.J.A.C. 14:10-1.2, that are subject to the jurisdiction of the New Jersey Board of Public Utilities.

(b) [The rules will apply to] This subchapter applies to the following:

1. [all local] Local exchange carriers and intrastate interexchange carriers offering competitive services[.];
2. [In addition to competitive] Competitive services offered by CLECs, IXC's and [the] ILECs, [this subchapter applies to the offering of new, non-competitive]; and
3. Non-competitive services offered by CLECs under N.J.A.C. 14:10-5.7.

(c) The subchapter [further] also applies to tariff revisions [to] , for existing non-competitive services offered by CLECs, which do not increase rates. [All tariffs concerning rate decreases or which have no rate impact filed by CLECs and IXC's with the Board which have not been acted upon, will be reviewed in accordance with this subchapter.]

14:10-[5.3] 5.2 Informational tariff filings

(a) (No change.)

(b) [Cross-references] A CLEC or IXC may include in its tariff cross-references to Federal Communications Commission interstate tariffs [are permitted] for volume discounts, optional features and other provisions not specifically required to be included in intrastate tariffs pursuant to (a) above.

14:10-[5.4] 5.3 [Requirements for tariff revisions to existing services which create increased] Tariff revisions that increase charges [to any customer]

(a) Tariff revisions [to] regarding existing competitive telecommunications services, which create increased charges to any customer, shall become effective five business days after notice of the proposed revision as described in (b) below, without the requirement of prior Board approval.

(b) The [notice requirement for a tariff revision, as described in (a) above,] CLEC shall notify the public of a proposed tariff revision described in (a) above [be] by direct mail to all affected customers or by publication in newspapers of general circulation throughout the affected service area[.]. The CLEC shall mail notice required by this subsection within 24 hours [of] after the filing of revised tariff pages with the Board.

(c) Proposed tariff revisions [as] described in (a) above shall be served on the [Division of the Ratepayer] Public Advocate within 24 hours of filing with the Board.

14:10-[5.5] 5.4 [Requirements for tariff revisions to existing services which create increased] Tariff revisions that do not increase charges [to any customer]

(a) Tariff revisions to existing competitive telecommunications services, or to any CLEC or IXC tariff [revision], which do not [create increased] increase charges to any customer, shall become effective one day after the filing of revised tariff pages with the Board, without the requirement of prior Board approval; except that a tariff revision for withdrawal of a service offering shall be governed by N.J.A.C. 14:10-5.11. [The withdrawal of any CLEC non-competitive service shall continue to be processed as set forth in N.J.A.C. 14:1-5.11(a)4 which requires 30 days' notice.]

(b) Proposed revisions [as] described in (a) above shall be served on the [Division of the Ratepayer] Public Advocate within 24 hours of filing with the Board.

(c) Revisions to non-competitive telecommunications service tariffs are governed by the Board's rules for all utilities at N.J.A.C. 14:3.

14:10-[5.6] 5.5 [Requirements for new] New competitive telecommunications service offerings [for] by existing interexchange carriers

(a) New competitive telecommunications service offerings [of] by existing interexchange carriers shall become effective five business days after [filing] the IXC files a tariff

revision covering the new service offering with the Board, without the requirement of prior Board approval.

(b) [Proposed revisions as] An IXC shall file a tariff revision for a service offering described in (a) above [shall be served on the Division of the Ratepayer] on the Public Advocate within 24 hours of filing with the Board.

(c) [The] A proposed tariff revision filing [requirements] for new competitive telecommunications services [of] offerings by existing interexchange carriers [are] shall include

[1. Interexchange carriers shall submit] a letter [containing:

i. A description of] describing the new service[;] and

[ii. Tariff] tariff pages with all rates, terms and conditions.

[2. The letter must be supplemented by a written schedule, providing, at a minimum, the following additional information:

i. The prospective customer base; and

ii. An indication of other services that are similarly competitive, through the use of tables or charts describing competitive services and/or alternatives, if applicable and how existing competitive offerings of that carrier or others, compare with the new competitive service, in terms of price, terms and conditions of service for typical customer usage.

3. If the supplemental written schedule contains sensitive information that would qualify under law for protective treatment as proprietary information, such schedule may be provided to the Board as a proprietary document bearing suitable markings, if accompanied by a motion as described at N.J.A.C. 14:10-5.9(d). Until the Board rules on the motion, the supplemental schedule shall not be disclosed to the public.

(d) The Board shall retain its authority to investigate and suspend, if necessary, all aspects of any competitive service if the filing violates any Board rule or is not otherwise in conformance with law.]

14:10-[5.7] 5.6 Initial CLEC or IXC tariff [of competitive local exchange carriers (CLECs) and interexchange carriers (IXCs)]

(a) Initial tariffs filed by CLECs for local exchange and exchange access services [and] , or by IXCs for interexchange services, shall be effective as filed 30 days following submittal to the Board, without the requirement of prior Board approval, except for a tariff covered at (b) below.

(b) If a CLEC files an initial tariff for a local exchange service concurrently with the CLEC's petition for local exchange authority, the tariff shall become effective thirty days after Board staff grant local exchange authority to the CLEC.

(c) All initial tariff filings made by a CLEC or IXC [must be consistent with existing law and must] shall be certified to be accurate, and in compliance with existing law, by an officer of the [company] CLEC or IXC.

(d) Should [a] an initial tariff filing be inconsistent with existing laws, [the] Board [delegates the authority to its] staff [to] shall forward a letter of deficiency to the [filing carrier] submitting CLEC or IXC. The deficiency letter [will serve as notice that the tariff is subject to suspension.

(b) Within 30 days of receipt of a notice of deficiency, the submitting CLEC or IXC shall file a modified tariff with the Board.] shall:

1. List the deficiencies in the initial tariff as submitted;
2. Identify the submittals required to correct the deficiencies;
3. Provide a deadline for the submittals required under (d)2 above; and
4. Notify the submitting CLEC or IXC that the initial tariff is suspended until the Board receives the necessary submittals required in (d)2 above.

(e) If Board staff receive the submittals identified in (d)2 above within the deadline in (d)3 above, [The modified] the initial tariff shall be effective immediately following the [submittal to the Board, unless the submitting carrier is notified in writing of a deficiency by Board staff, in which case, the tariff shall continue to be suspended until all deficiencies are corrected.] Board's receipt of the submittals.

(f) If Board staff do not receive the submittals required under (d)2 above within the deadline, the CLEC or IXC petition shall be considered withdrawn. The CLEC or IXC may subsequently submit a new tariff filing and begin the review process again.

[(c) Any initial tariff filed in conjunction with a petition for local exchange authority shall become effective 30 days following the grant of local exchange authority by the Board unless a notice of a deficiency is forwarded to the filing carrier in accordance with (a) and (b) above.

(d) If at anytime, upon review of a tariff, the Board's staff determines that a tariff does not conform to existing law, it may notify the provider that the tariff is subject to suspension unless addressed and modified within 30 days of the filing. If the modifications are not satisfactory, the tariff will then be suspended until all existing deficiencies are corrected.

14:10-5.8 (Reserved)

14:10-5.9 Reporting requirements

(a) Every local exchange carrier and interexchange carrier providing competitive intrastate telecommunications services shall provide to the Board information on a quarterly basis within 30 calendar days of the end of the quarter which shall include:

1. Total number of customers pre-subscribed by type of service;
2. Total minutes of use by type of service;
3. Total number of calls by type of service;
4. Per-unit sold, total quarterly revenue by type of service;
5. A schedule detailing any and all price changes by type of service;
6. A description of each service offering;

7. A list of all discount plans applicable to each type of service, as well as a description of their terms and the type and class of customer that could qualify for each such plan.

8. A summary of complaints by type of service; and

9. Any further information deemed necessary by the Board to fulfill the mandates of P.L. 1991, c.428.

(b) In addition to the quarterly information required in (a) above, every local exchange carrier and interexchange carrier providing competitive intrastate telecommunications services shall provide the Board, on an annual basis, no later than March 31 for the preceding calendar year, a schedule detailing for each type of service, the total number of pre-subscribed customers, total minutes of use, per-unit price, per-unit sold, total quarterly and total annual revenue, service description, and the total and percentage change by quarter and annually to each item.

(c) All background and supporting documentation used to develop the information required by (a) above shall be maintained during the pendency of these rules and shall be available for inspection by the Board, its staff or its designees, upon request.

(d) Any carrier is permitted to file with the Board a motion for a protective order to protect any and/or all of the information required by (a) or (b) above from public disclosure. Any such motion shall be supported by affidavit which shall delineate the specific basis for the request for the protective order.

1. In the event the Board issues a protective order, the Board's staff shall take appropriate measures to maintain the confidentiality of the records and access to such records shall be limited to agents, employees, and attorneys of the Board, and, in the discretion of the Board, to any other appropriate governmental agency. All such governmental agencies shall be subject to the confidentiality requirements contained in this subsection. In addition, the Director of the Division of the Ratepayer Advocate shall be permitted to receive copies of such reports provided that the Director treats the information contained in the reports in a proprietary and confidential manner.

(e) The annual financial reporting requirement shall remain in full force and effect. Such annual reports shall be filed on or before March 31.]

14:10-[5.10 Standards for the] 5.7 Board monitoring of competitiveness [of rate regulated and competitive telecommunications services and providers of those services.]

(a) In monitoring the competitiveness of rate regulated and competitive telecommunications services and/or providers of those services, the Board may request any information necessary from a carrier. In addition, the Board may[:

1. Use] use information collected pursuant to N.J.A.C. [14:10-5.9] N.J.A.C. 14:10-4 to conduct an analysis as to whether individual services and/or the markets for telecommunications services are becoming more or less competitive[; specifically,] .

(b) In conducting the analysis described under (a) above, the Board may:

1. [monitor] Monitor the market shares of carriers as measured by number of calls, minutes of use, number of customers and customer complaints;
2. [Consider using] Use an economic measure of concentration, or any other appropriate economic indicator, statistical technique or analytical tool to measure existing or projected market share and the competitiveness of individual services and providers; and/or
3. [Consider using] Use a customer survey to solicit information related to the perception of the level of competition by [actual] telecommunications end users.

[(b)] (c) The Board may reclassify a service that had previously been found to be competitive, if, after notice and hearing, the Board finds that one or more of the following conditions are met

1. That the market concentration for an individual carrier results in a service no longer being sufficiently competitive;
2. That significant barriers to market entry exist;
3. That there is a lack of significant presence of competitors;
4. That there is a lack of like or substitute services in the relevant geographic area;
5. That a carrier is not providing safe, adequate or proper service; or
6. That the public interest is no longer served by [available competition] the existing regulatory flexibility afforded to carriers.

14:10-[5.11 Discontinuance of service offerings] 5.8 Withdrawal of a competitive service from subscribers

(a) Any carrier providing competitive services may[, upon 30 days notice to the Board and its customers, discontinue any competitive service offering] withdraw a competitive service from subscribers after thirty days notice to all of its customers and the Board, except as specified under (b) below.

(b) [Service offerings provided] Notwithstanding (a) above, if a competitive service is provided solely by a single carrier [may be discontinued, unless] , the carrier shall not withdraw the service if Board staff notifies the carrier that [it will postpone the discontinuance of the service pending] the withdrawal requires prior Board review and approval.

14:10-5.9 Discontinuance of a competitive service offering

(a) A carrier may discontinue offering a competitive service after providing one day notice of the discontinuance to all customers and the Board. New customers will not have the option to subscribe to the service. However, existing subscribers shall continue to receive the service.

(b) Notwithstanding (a) above, if a competitive service is offered solely by a single carrier, the carrier shall not discontinue the service offering if Board staff notifies the carrier that the discontinuance requires prior Board review and approval.

SUBCHAPTER 6. [REGULATION OF] OPERATOR SERVICE PROVIDERS

14:10-6.1 Scope

(a) [The rules contained in this] This subchapter shall apply to the following, as these terms are defined at N.J.A.C. 14:10-1.2:

1. [alternate operator] Operator service providers[.];
2. Alternate operator service providers[.]; and
3. [aggregators, as defined in N.J.A.C. 14:10-6.2, including aggregators whose location offers] Aggregators, including those that offer similar services [equivalent] to an operator service provider[.] , from an instrument other than a public pay telephone.

(b) In addition to this subchapter, those aggregators who are also public pay telephone service (PPTS) providers are subject to N.J.A.C. 14:10-9.

[14:10-6.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Aggregator" means a person or entity which, in the ordinary course of its business, makes telephones available to the public or to transient users of its premises, including, but not limited to, hotels, motels, hospitals, or universities, and which provides operator-assisted services through either automated store and forward technology or through an operator service provider.

"Alternate operator service provider" or "AOS" means a non-facilities based telecommunications carrier that is a reseller leasing lines from local exchange carrier(s) and/or interexchange carrier(s) and which, using these leased facilities, provides operator-assisted intrastate services through the use of its own operators, either through live intervention or automated intervention, including automated store and forward technology where the placement or charging of a telephone call is accomplished at an aggregator location.

"Billing agent" means a billing and collection company or billing clearing house which processes an alternate operator service provider's call data to appear on local exchange company telephone bills, or any other forms of bills, issued to the consumer that utilized the services of an alternate operator service provider.

"Board" means the Board of Public Utilities.

"Branding" means verbal identification of the OSP prior to connection of the call and implementation of billing.

"Equal access code" means an access code that allows the public to obtain an equal access connection to the carrier associated with that code, such as 10XXX or 101XXXX, if applicable.

"Incumbent local exchange carrier" or "incumbent LEC" means a telecommunications carrier with a Board authorized tariff in effect prior to February 8, 1996, to provide switched local exchange services in the State of New Jersey.

"IXC" means interexchange carrier.

"Operator-assisted services" means services which assist consumers in the placement or charging of a telephone call, either through live intervention or automated intervention, including automated store and forward technology where the placement or charging of a telephone call is accomplished at an aggregator location.

"Operator service provider" or "OSP" means any telecommunications carrier that provides operator-assisted services, including AOS providers.

"Presubscribed provider of operator services" means the provider of intrastate operator services to which the consumer places a call using a provider of operator services without dialing an access code.

"Rate" means the total charge to a consumer for the completion of a call utilizing operator-assisted service including all surcharges, premises imposed fees and other charges, collected from the consumer.

"Slamming" means an unauthorized change of a consumer's primary interexchange carrier or the failure to execute an authorized change in a consumer's primary interexchange carrier.

"Splashing" means billing for a call that does not reflect the location of the origination of the call.

"Tariffed facilities-based carrier" means any communications carrier that provides services on a common carrier basis through the use of their own facilities and currently has, or would be required by statute or rule to file, a tariff. This specifically excludes alternative operator service providers as defined in this subchapter.]

14:10-[6.3] 6.2 Operator service [provider requirements] providers and aggregators

(a) [Operator service providers may] Any person may hire an OSP to complete intrastate operator-assisted calls, subject to the requirements of this subchapter.

(b) [Operator service providers and aggregators shall be subject to Board regulation as described in this subchapter. The] Board [or its] staff may investigate the conduct of any OSP or aggregator to evaluate compliance with this subchapter, and may take appropriate enforcement action [as required] in accordance with N.J.A.C. 14:10-6.9.

(c) Operator service providers and aggregators are responsible for conformance with all rules as specified in this subchapter. The Board may, after notice and an opportunity to be heard in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, take such action against an OSP and/or aggregator as is necessary to rectify any non-conformance with the rules or to protect the general public interest. If the Board finds that an OSP or aggregator is not in compliance with a Board rule or order, [The] the Board's actions may include the imposition of penalties for violations as described in N.J.A.C. 14:10-[6.6] 6.9, disconnection of intrastate service to individual aggregator locations experiencing persistent violations, as well as the restriction of certain billing and collection activities subject to the Board's regulation.

14:10-6.3 Informing callers about the OSP

[(d)] (a) Each aggregator [connected to] or other regulated entity that hires or otherwise utilizes an OSP shall place directly on the telephone instrument, in plain view of consumers:

1. The name, address, and toll free number of the [provider of operator services] OSP;
2. A clear and precise description of the geographic area served by the LEC; and
3. [the] A clear description of the geographic area served by the [presubscribed] OSP. That is, local operator-assisted calls are carried by the LEC, intrastate operator-assisted toll calls within the area code are carried by one OSP, intrastate operator assisted calls outside the area code are carried by a second OSP;
4. [3.] A written disclosure that the rates for all operator-assisted calls are available on request and free of charge, and dialing instructions on how to obtain this information;
5. [4.] A written disclosure that consumers have a right to obtain access to the intrastate operator service provider of their choice and may contact their preferred carrier for information on accessing that carrier's operator service provider using that telephone;
6. [5.] Dialing instructions which detail the OSP's dialing procedures;
7. [6.] Dialing instructions for access to the LEC operator;
8. [7.] The Board's toll free customer complaint telephone number; and
9. [8.] All information required by the Federal Communications Commission at 47 C.F.R. 64.703, as amended and supplemented, which is incorporated herein by reference[, copies of which may be obtained upon request from the Secretary of the Board, except that implementation of 47 C.F.R. 64.703(a)(4) shall be effective on October 1, 1999.]

[(e)] (b) Operator service providers shall verbally inform callers, audibly and distinctly, prior to connecting the call and [the implementation of billing] prior to starting the timing of the call for charging purposes, of all of the following information:

1. [that] That the presubscribed OSP is handling the operator-assisted call, this shall be done by verbal identification of the OSP. Accordingly, branding is required;
2. [In addition, all operator service providers shall disclose audibly and distinctly to the consumer, at no charge and before] Prior to connecting any intrastate, 0+ call, how [to] the caller can obtain the actual, or maximum possible, total cost of the call, including any aggregator surcharge and/or location specific charges [,or the maximum possible total cost of the call, including any aggregator surcharge and/or location specific charges, before providing further oral advice to the consumer on how to proceed to make the call.];
3. [The oral disclosure required in this subsection shall instruct consumers that they] That the caller may obtain applicable rate and surcharge quotations, and how to do so. It shall be [either, at] the option of the [provider of operator services,] OSP whether the rates or quotations are obtainable by dialing [no more than] one or two digits, or by remaining on the line [.] ; and

4. [Operator service providers shall satisfy the requirements of this section by notifying the called party for collect and third party billed calls, and notifying the calling party for] For calling card or any other [operator service provider] OSP assisted call that will be billed to the calling party, that the call will be billed to the calling party.

(c) For collect or third party billed calls, an OSP shall comply with (b)1 through 3 above, and shall in addition verbally inform the party being called or the third party, audibly and distinctly, prior to connecting the call and prior to starting the timing of the call for charging purposes, that the call will be billed to the called party or third party, as applicable.

[(f)] (d) Each [provider of] operator services provider shall ensure, by contract, that each aggregator for which such [provider] OSP is the presubscribed [provider of operator services,] OSP is in compliance with [the requirements of (d) above.] this section. The OSP shall provide Board staff with a copy of the contract upon request.

[(g) Operator service providers shall provide callers with rate quotes, including any and all surcharges, upon request and without charge.

(h) Alternate operator service providers may charge, as a maximum rate for intrastate calling card calls which do not require the intervention or use of a live operator, that is, a "0+" calling card call, at transient locations, which includes all pay telephones, \$2.75 for up to a five minute local or non-local call. Additional per minute rates equal to the applicable per minute rates contained in the AT&T tariff on file with the Board will apply for calls greater than five minutes.

(i) Alternate operator service providers may charge, as a maximum rate for intrastate operator assisted calls which require the intervention or use of a live operator, that is, a "0 & dash;" operator assisted call, at transient locations, which includes all pay telephones, \$4.25 for up to a five minute local or non-local call. This rate is subject to the rate change provisions contained in N.J.A.C. 14:10-6.3(j). Additional per minute rates equal to the applicable per minute rates contained in the AT&T tariff on file with the Board shall apply for calls greater than five minutes. This maximum rate shall also apply to collect calls that do not use a live operator but use a voice prompt. The maximum rate contained in this subsection is indexed to the applicable rate contained in the AT&T tariff on file with the Board, and may increase as AT&T's rate changes. The AT&T rate is posted on the Board's web page at [http:// www.njin.net/njbpu](http://www.njin.net/njbpu). If AT&T's rate increases by more than \$ 1.00, AOS companies shall be capped at \$ 5.25 (\$ 4.25 plus \$ 1.00) and shall be required to seek Board approval for rates in excess of \$ 5.25. Such filings shall conform to N.J.A.C. 14:1-5.12.]

14:10-6.4 AOS rates for intrastate operator-assisted calls

(a) An alternate operator service provider may charge the following maximum rates:

1. For a local or non-local intrastate calling card call that does not require the intervention or use of a live operator (that is, an "0+" calling card call at a

transient location), and is no longer than five minutes, the maximum rate shall be \$2.75;

2. For a local or non-local intrastate call that requires a live operator (that is, an "0-operator assisted call at a transient location), and is no longer than five minutes, the maximum rate shall be \$4.25;
3. For a collect call that does not use a live operator but uses a voice prompt, the rate shall be the same as for an operator assisted call under 2 above; and
4. For a call described at 1 through 3 above, that is greater than five minutes, an additional per minute rate may be charged, in addition to the charges under 1 through 3 above. The per minute rate shall equal the applicable per minute rate in the AT&T tariff on file with the Board at the time of the call. The AT&T rate is posted on the Board's webpage at <http://www.njin.net/njbpu>; and
5. Notwithstanding 4 above, an AOS's rate for a call described at 2 or 3 above shall be capped at \$5.25 (\$4.25 plus \$1.00). The AOS shall not charge more than \$5.25 without prior Board approval. A request for Board approval of a higher rate shall conform to the requirements for petitions at N.J.A.C. 14:1-5.12.

[(j)] (b) Alternate operator service providers shall file informational tariffs [showing the applicable maximum rates and any subsequent rate adjustments] for intrastate services with the Board, [as required by] which meet the requirements of N.J.A.C. 14:10-[6.7] 6.8., for intrastate services. The Board will permit rate changes in response to a rate change request from an AOS provider, if]

(c) An AOS may request Board authorization of a modification of its rates. The Board shall authorize such a modification in one of the following ways:

1. If the new rate [remains below] is lower than the rate in effect at the time the tariff modification is submitted, the AOS may modify the rate in accordance with the procedure for a tariff modification that does not increase charges, set forth at N.J.A.C. 14:10-5.5;
2. If the new rate is higher than the rate in effect at the time the tariff modification is submitted, but is no higher than the maximum rates described in [(h) and (i) above. Such filings shall conform to and be governed by N.J.A.C. 14:10-5.4 or 5.5, as may be applicable.] (a) above, the AOS may modify the rate in accordance with the procedure for a tariff modification that increases charges, set forth at N.J.A.C. 14:10-5.4; and
3. If the new rate is higher than the maximum rate described in (a) above, the AOS shall petition the Board for approval of a rate increase.

[(k)] (d) Surcharges associated with non-[coin] pay telephones [that] , which are not part of the actual telephone bill or imposed by an OSP, but are add-on charges imposed by hotels, motels, hospitals, universities and/or other [similar transient locations] CPPTS providers, are not prohibited by these rules[, but]. However, notice of any surcharge shall be displayed by the aggregator [for the users of the affected telephones.] in accordance with N.J.A.C. 14:10-6.3(b)2.

[(l)] No operator service provider shall submit to a LEC a primary interexchange carrier change order to change long distance carriers until the order has first been confirmed in accordance with the procedures set forth by the Federal Communications Commission, at 47 C.F.R. 64.1100, as amended or supplemented, copies of which may be obtained upon request from the Secretary of the Board. To do otherwise results in slamming, as defined in N.J.A.C. 14:10-6.2, a practice which is hereby prohibited.]

[(m)] (e) Operator service providers shall not bill for calls that are not completed.

[(n)] Twelve months from the date of implementation of the maximum rates contained in (h) and (i) above, the Board shall initiate a review of the rates to assess the effects of these maximum rates on the industry.]

14:10-[6.4] 6.5 Access to all operator service providers

(a) [Free] The aggregator that utilizes an OSP shall ensure that all callers have free access to all operator service providers, including the LEC operator serving that geographical area, [shall be made available] from all instruments connected to operator service providers, with the exception of government controlled correctional facilities.

(b) Each aggregator[, which includes every pay telephone in service,] shall ensure that each of its telephones in service, that utilizes a presubscribed [to a provider of operator services] OSP, allows the [consumer free use of "10XXX" or 101XXXX, if applicable, and "800" and "950" access code numbers] caller to obtain access, without charge, to the [provider of operator services] OSP desired by the consumer. This subsection does not apply to the use of [equal] access code dialing sequences that result in billing to the originating telephone [such as 10XXX-1+ or 101XXXX-1+, if applicable].

[(b)] (c) Each[provider of operator services] OSP shall:

1. Ensure, by contract, that each aggregator for which such provider is the presubscribed [provider of operator services is in compliance] OSP complies with [the requirements of] (a) and (b) above; and
2. Withhold payment [, on a location-by-location basis,] to aggregators of any compensation, including commissions, [to aggregators] on a location-by-location basis, if [such provider] the OSP reasonably believes that the aggregator is blocking access to other operator service providers in violation of (a) and (b) above.

[(c)] (d) No operator service provider shall transfer a call to another OSP unless that transfer is accomplished at, and billed from, the point of origination of the call. To do otherwise results in splashing, as defined in N.J.A.C. 14:10-[6.2] 1.2[, which is hereby prohibited]. If such a transfer is not technically possible, the OSP shall inform the caller that the call cannot be transferred as requested and that the caller should hang up and attempt to reach another operator service provider through the means provided by that other OSP.

(e) A carrier shall calculate charges based on a call's point of origination, unless:

1. The caller requests to be transferred to a different carrier's OSP; or
2. Both of the following requirements are met:
 - i. The caller is informed, before timing of the call for billing purposes begins, that the call may be billed as if it originated somewhere other than the location from which the call actually originated; and
 - ii. The caller consents to the change in billing location.

14:10-[6.5] 6.6 "0-" and emergency call handling

(a) All "0-" calls, which are calls originated by dialing "0" and no other digits within four seconds, shall be sent promptly and directly to the incumbent LEC operator serving the geographic area where the instrument is located, unless the presubscribed operator service provider has [been granted approval by] certified to the Board, as described in (b) through (e) below, its ability to provide such service.

(b) An operator service provider may petition the Board for authority to provide "0-" and emergency call completion. [If an individual] The OSP [can certify] shall certify that it is capable of meeting the technical parameters [required by the Board] in (c) through (e) below [and following a petition to the board detailing how the service will be provided, it may be granted permission to do so. Operator service providers who have been previously authorized to complete "0-" and emergency calls shall not be required to seek authority as described in this subsection].

(c) [Operator service providers shall be permitted] The Board shall authorize an OSP to offer "0-" services only if the OSP also offers both free public access to the incumbent LEC operator serving that geographical area and emergency call handling [are also provided]. Incumbent LEC access must be available and be accomplished by either a direct dialing sequence [which must be prominently displayed directly on the telephone instrument] or by direct connection to the incumbent LEC operator upon request.

(d) [All operator service providers required to petition the] To obtain Board approval to offer [for] "0-" and emergency call completion under (b) above [must], an OSP shall meet the following technical standards[. All operator service providers shall]:

1. (No change.)
2. Require by contract that all connecting users provide free access to all other operator service providers upon request, in accordance with N.J.A.C. 14:10-[6.4] 6.5, including the incumbent LEC operator service and, in addition, that all connecting users:
 - i. - ii. (No change.)
3. - 6. (No change.)
7. Make traffic studies and maintain records as required to ensure that sufficient equipment and an adequate operating force are provided at all times to ensure compliance with the performance requirements set forth herein. These studies and records shall be made available to the Board's staff [annually] upon request for review purposes. Further, the OSP shall submit certified reports [annually] upon request to the Board's staff showing that grade of service and response time are within the performance limits described in this subchapter; and

8. (No change.)
- [9. Record all emergency calls in detail immediately after the call is transferred or terminated, as appropriate. Call detail will include but not be limited to originating telephone number and location, the emergency service agency requested or to which the operator transferred the call, the date of the call, the time the call was received, the time the call was connected to the emergency service agency, a brief description, and if known, where an injury is involved and the severity of that injury;
10. Submit a list of its New Jersey customers to the Board's staff on an annual basis. This list shall include, but not be limited to, customer locations and customer phone numbers. The customer list shall be afforded confidential treatment; and
11. Submit reports to the Board's staff annually regarding its emergency call completion as detailed above.]

14:10-[6.6 Penalty] 6.7 Penalties for violations

(a) Any AOS provider which violates [the provisions of] this subchapter shall be subject to the [schedule of fines as described] applicable penalty set forth in table A below. [The amount of the fine identified shall be assessed for each infraction. Each call completed in violation of these rules, or each day a violation exists, is considered a separate infraction.]

(b) Each violation of this subchapter shall constitute a separate and distinct violation, for which the Board may assess a separate penalty.

(c) If a violation is of a continuing nature, the Board may deem each day that the violation continues to be a separate and distinct violation, for which a separate and distinct penalty may be assessed.

(d) The penalty amounts for violations of this subchapter are set forth in table A below:

TABLE A

Penalties For Violations

<u>Violation</u>	<u>Penalty</u>
[Exceed] Exceeding maximum [permissible] rates <u>authorized under</u> N.J.A.C. 14:10-[6.3(h), 6.3(i)] <u>6.4(a)</u>	\$ 5,000
[Violate] <u>Noncompliance with</u> emergency call procedures <u>set forth at</u> N.J.A.C. 14:10-[6.5] <u>6.6</u>	\$ 5,000
Slamming, <u>in violation of</u> N.J.A.C. 14:10-[6.3(l)] <u>11</u>	\$ 3,000
[Deny] <u>Noncompliance with the</u> free access [to all OSPs] <u>requirements at</u> N.J.A.C. 14:10-[6.4(a)] <u>6.5</u>	\$ 2,500

[Branding] <u>Noncompliance with branding, rate quote and reporting requirements at N.J.A.C. 14:10-6.3(e), 6.3(g) and 6.7] (b) and (c), and 6.8</u>	\$ 2,000
Splashing or billing for uncompleted calls, <u>in violation of N.J.A.C. 14:10-[6.4(c) and 6.3(m)]6.5(d) and 6.4(e)</u>	\$ 2,000
[Any other violation] <u>Noncompliance with any other provision of this subchapter</u>	\$ 1,000

14:10-[6.7] 6.8 Alternate operator service provider informational tariffs

(a) AOS providers, as defined in N.J.A.C. 14:10-[6.2]1.2, shall file informational tariffs with the Board. These tariffs shall contain:

1. The name, address and telephone number of the [party] contact person responsible for the resolution of customer complaints regarding the performance of the AOS provider. This information shall be kept up to date;
2. (No change.)
3. The total charge for each category of service, including but not limited to collect calls, credit or calling card calls and person-to-person calls, as well as the individual rate elements that comprise the total charge, such as operator surcharges, premises imposed fees, mileage and time of day charges, applicable maximum rates, and every other surcharge or fee; [and]
4. An acknowledgment that penalties for violations of [the conditions of operator service] this chapter may result in the imposition of fines, as set forth in N.J.A.C. 14:10-[6.6] 6.7, or disconnection of intrastate service, as set forth in N.J.A.C. 14:10-[6.3(c)] 6.2(c); and

[(b) In addition to the requirements contained in (a) above, the following information shall be submitted with the initial informational tariff filing, and annually thereafter:

1. A comparative balance sheet for the most recent two year period on either a calendar or fiscal year basis;
2. A comparative income statement for the most recent two year period on either a calendar year or fiscal year basis;
3. A balance sheet as of the most recent date available;
4. A statement of the amount of revenue, expenses, number of calls completed, and number of complaints filed against the company with any regulatory agency, in the last preceding calendar year;]
5. A list of all principals of the firm, [with the following information:
 - i. The] including the name, address and telephone number of each principal]; and
 - ii. The percent ownership interest of the principals owning more than five percent;
 and
6. The qualifications and the business or technical experience of the officers, directors or other principal management and operating personnel with particular respect to their ability to carry out the AOS provider's obligation to render safe, adequate and proper service].

14:10-[6.8 Customer] 6.9 LEC billing for operator assisted services

(a) [LECs that provide] If a LEC provides billing and collection services to other operator service providers, the LEC shall include a statement on the other [operator service provider's] OSP's portion of each customer's bill advising the customer that the other OSP is not affiliated with the LEC.

(b) [LECs that provide] If a LEC provides billing and collection services to a billing agent, as defined in N.J.A.C. 14:10-[6.2] 1.2, the LEC shall, in addition to meeting the requirements in (a) above, [include and] clearly identify on the bill the name, address and telephone number of the OSP who furnished operator service to the consumer.

SUBCHAPTER 7. ACCESS TO ADULT ORIENTED INFORMATION-ACCESS TELEPHONE SERVICE

14:10-7.1 Scope

(a) This subchapter applies [only to telephone companies electing to provide a subscriber] to any entity that elects to provide subscribers with access to adult-oriented information-access telephone service in the State.

[(b) For purposes of this subchapter, telephone companies include local exchange telephone companies (LEC) and interexchange carrier telephone companies (IXC) operating in the State. IXC includes both facilities based carriers and resellers.]

(b) [(c) The provisions of this] This subchapter shall apply to both "976" services which are accessed by a seven digit telephone number of the form NXX-XXXX₁ and "900" or "700" services which are accessed by a 10 digit telephone number of the form 900-NXX-XXXX or 700-NXX-XXXX₁ as well as any future access arrangement for adult-oriented information access telephone service.

14:10-7.2 Reserved [Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Adult-oriented information-access telephone service" means a class of telephone service where for a charge, in addition to the basic exchange charge, sexually explicit messages are furnished.

"IXC" means interexchange carrier telephone companies or other such providers, both facilities based and resellers.

"Information providers" means those entities who utilize LEC or IXC adult-oriented information-access telephone services to provide sexually explicit messages.

"LEC" means local exchange telephone companies, including competitive access providers or other providers of local or toll services.

"Subscriber" means a telephone customer of an LEC or IXC.]

14:10-7.3 Restrictions on access to adult-oriented services

(a) No telephone [company operating in the State] utility shall provide a subscriber with access to adult-oriented information-access telephone service in the State without written authorization from the subscriber.

(b) LECs offering seven digit adult-oriented information-access telephone service shall assign all lines providing such service to [a specific] the same Central Office code, or codes (NXX)[, and arrange all lines in the code or codes, to be normally blocked. Unblocked access shall be pursuant to N.J.A.C. 14:10-7.4(a)].

(c) LECs and IXC's offering 10 digit adult-oriented information-access telephone service shall assign all lines accessing such service to [a specific] the same 900-NXX or 700-NXX code or codes [and arrange all lines in the code to be normally blocked. Unblocked access shall be pursuant to N.J.A.C. 14:10-7.4(a)].

(d) A LEC or IXC that offers adult-oriented information access telephone service shall do one or more of the following to ensure that non subscribers do not obtain access to the service:

1. Ensure that all lines used for that service are blocked, except as necessary to provide service to subscribers enrolled pursuant to N.J.A.C. 14:10-7.4(a);

[Alternatively, LECs and IXC's may:]

[1.] 2. Require as a condition of service that adult-oriented information providers [utilizing the LEC or IXC intrastate adult-oriented information-access telephone service] restrict access to the service [as indicated in N.J.A.C. 14:10-7.4(a).] for all callers except subscribers enrolled pursuant to N.J.A.C. 14:10-7.4(a). Such LECs or IXC's shall be responsible for assurance that information providers restrict access in accordance with this rule; or

[2.] 3. Require as a condition of service that [the] an adult-oriented information provider [offering intrastate adult-oriented information-access service] scramble its transmissions, and supply audio descramblers to subscribers, so as to ensure that inadvertent or unauthorized access will not result in intelligent transmission. [Descrambler provision shall be pursuant to N.J.A.C. 14:10-7.4(a).]

(e) No telephone [company operating in the State and] utility offering adult-oriented information-access telephone service originating in the State shall permit access of such service from telephone operators or pay telephones.

(f) [Subscribers] Telephone utilities shall ensure that subscribers to local telephone service in the State [shall be] are advised of these rules through inclusion in the informational consumer guide pages in the front of local telephone directories.

14:10-7.4 Subscriber requests for service; charges

(a) Telephone [companies] utilities or information providers offering intrastate adult-oriented information-access telephone service shall [permit access] require submittal of the following prior to granting a subscription to the service [only upon receipt of a]:

1. A written and signed subscriber request[.]; and
[1.] 2. [The subscriber request shall include an] An appropriate means of proof (such as a photocopy of a birth certificate or a valid State driver's license), in the same name as the customer of record listed on the telephone account [of record], that the requesting subscriber is over 18 years of age.

[2.] (b) The telephone [company] utility or adult-oriented information provider offering the adult-oriented information-access telephone service shall maintain the hard copy signed subscriber request with proof of age for the duration [that access to the service is unblocked] of the subscription.

[(b)] (c) The initial subscriber request to unblock access at a given location shall be free of charge to the subscriber.

[(c)] (d) If an LEC elects to charge for subsequent requests to reblock or unblock, the subscriber shall be charged the then prevailing service order charge for adding service to an existing line and the central office work charge for an existing line.

[(d)] (e) If an IXC elects to charge for subsequent requests to reblock or unblock, the subscriber shall be charged the then prevailing service order charge for adding service to an existing line and the central office work charge for an existing line charged by the LEC providing the subscriber basic telephone service.

[(e)] (f) In the event that the serving LEC does not have a tariffed service order charge for adding service to an existing line and for central office work for an existing line, the tariffed charge from the LEC serving the largest number of telephone lines in the State having such a tariffed charge shall be used.

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. PUBLIC PAY TELEPHONE SERVICE

14:10-9.1 Scope

[The rules contained in this] This subchapter shall apply to the provision of public pay telephone service ("PPTS") as defined in N.J.A.C. 14:10-[9.2] 1.2, [for any PPTS provider] in New Jersey[, with the exception of inmate pay telephone service providers in government controlled correctional facilities as set out in N.J.A.C. 14:10-9].

[14:10-9.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Board" means the Board of Public Utilities.

"Correctional facility" means an institution, including prisons, jails and detention centers, operated by a governmental entity, which is dedicated to the treatment, rehabilitation or confinement of criminal offenders.

"Customer provided pay telephone service" or "CPPTS" means pay telephone service furnished through the resale of a local exchange carrier's tariffed CPPTS line.

"Customer provided pay telephone service provider" or "CPPTS provider" means the person or entity which is the customer of record which purchases a CPPTS line and is responsible for the pay telephone instrument which offers CPPTS.

"Incumbent local exchange carrier" or "incumbent LEC" means a telecommunications carrier with a Board authorized tariff in effect prior to February 8, 1996 to provide switched local exchange services in the State of New Jersey.

"Local call" means a call within local service areas as identified in incumbent LEC tariffs approved by the Board.

"Operator service provider" or "OSP" means any telecommunications carrier that provides operator-assisted services, including alternate operator service providers.

"Public pay telephone service" or "PPTS" means telephone service provided for the use of the transient public, which includes CPPTS.

"Public pay telephone service provider" or "PPTS provider" means a person or entity who provides PPTS.

"Rate" means the total charge to a consumer for the completion of a call utilizing PPTS service including all surcharges, premises imposed fees and other charges collected from the consumer.]

[14:10-9.3 Public pay telephone service requirements] 14:10-9.2 The PPTS instrument

(a) Each PPTS instrument shall provide a dial-tone [first] without requiring the caller to insert payment into the instrument.

(b) Each PPTS instrument shall allow consumers free access to the following calls, without use of coin or credit cards to originate such calls:

1. Operator calls ("0");
2. Access to toll-free service, including all 800 numbers and 950 [carrier access code] numbers;
3. [Use of equal] Calls using access codes[, specifically 10XXX or 101XXXX, if applicable,] necessary to enable the caller to obtain access to the consumer's desired provider of operator services;
4. Completion of collect, third party billed, and carrier calling card calls; [and]
5. Telecommunications Relay Service calls for the hearing disabled[.]; and
6. Dialing and completion of 9-1-1 calls.

[(c) As 9-1-1 emergency service is available throughout the State, all public telephones, including coin and credit card telephones, both public and private, shall, in addition to the requirements set out in (b) above, be configured to allow a caller to dial and complete a 9-1-1 call without inserting a coin or any other form of payment.]

(c) The keypad of each PPTS instrument shall feature both numbers and letters in the standard arrangement typically provided on telephone sets.

(d) PPTS providers shall prominently display the following information directly on each telephone instrument, in plain view of consumers:

1. [1. The name, address, and toll-free number of the provider of operator services;
2. The name, address and toll-free telephone number of the PPTS provider, including refund information;
3. A clear and precise description of the geographic area served by the LEC and the geographic area served by the presubscribed OSP. That is, that local operator-assisted calls are carried by the LEC, that intrastate operator assisted toll calls within the area code are carried by one OSP, and that intrastate operator-assisted calls outside the area code are carried by a second OSP;
4. Written disclosure that the rates for all operator-assisted calls are available on request, and that consumers have a right to obtain access to the intrastate operator service provider of their choice and may contact their preferred carrier for information on accessing that carrier's service using that telephone;
5. Dialing instructions that detail the presubscribed operator service provider's dialing procedures;
6. Dialing instructions for access to the incumbent LEC operator;
7. The Board's toll-free customer complaint telephone number;]
1. All of the information required under N.J.A.C. 14:10-6.3(a);
- [8.] 2. The rate for a direct-dialed, coin-generated local call;
- [9.] 3. Notice of the inability to accept incoming calls where PPTS providers prevent such call completion;
- [10.] 4. The telephone number of the PPTS instrument unless the notice requirement contained in [(d)9] 3 above is present;
- [11.] 5. Notice of the inability to complete international calls where PPTS providers block such calls; and
- [12.] 6. Instructions on how to access the emergency enhanced 9-1-1 system.

14:10-9.3 Public pay telephone service (PPTS)

[(e)] (a) Caller requested rate quotes and alternative carrier access information shall be available to PPTS users upon request and free of charge.

[(f)] (b) PPTS shall [have the ability to complete] include local and intrastate toll calling.

[(g)] (Reserved)

(h) PPTS providers shall make every reasonable effort to repair instruments within 48 hours of notification of a service outage.]

[(i)] (c) Where PPTS providers prevent incoming call completion, said providers shall make arrangements to ensure non-publication of its number in directory listing services offered by the incumbent LEC for each service location.

[(j)] (d) PPTS providers shall designate [and file with the Board, a party] a person, as defined in N.J.A.C. 14:3-1.1, within the State of New Jersey, that is responsible for

processing refunds to consumers. All refunds shall be in the form of cash [or], a check, or a credit on the customer's telephone bill. The PPTS provider shall provide contact information for the person to Board staff, and shall update the contact information if it changes.

[(k)] (e) The Board or its staff shall investigate the conduct of any PPTS provider following receipt of a customer complaint to the Board concerning the PPTS provider. The Board shall, after notice and opportunity to be heard in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, take appropriate action against a PPTS provider[, including disconnection of intrastate service to individual PPTS locations experiencing persistent violations,] as is necessary to rectify any non-conformance with these rules or to protect the general public interest.

[(l)] (f) PPTS providers shall not charge for calls that are not completed.

[(m)] The keypad of each PPTS instrument shall feature both numbers and letters in the standard arrangement typically provided on telephone sets.]

14:10-9.4 Additional regulation of customer provided pay telephone service

(a) In addition to the [provisions set forth] requirements in N.J.A.C. 14:10-9.3, CPPTS providers, as defined in N.J.A.C. 14:10-[9.2] 1.2, are subject to the following:

1. CPPTS providers [are permitted to charge end users] shall not charge more for directory assistance calls [up to a maximum rate equivalent to that] than the rate which the LEC charges the CPPTS provider for directory assistance service;
2. More than one CPPTS instrument may be connected per CPPTS exchange access line, such as behind a PBX or other types of call concentration equipment, provided that such arrangements[,] ensure user privacy [and do not result in inordinate levels of blocking];
3. [Extensions] A CPPTS provider shall ensure that any extension of CPPTS exchange access lines [are permitted. However, such extensions shall] is either [be] technically unable to monitor the CPPTS instrument, or the CPPTS provider shall prominently display notice to end users that the CPPTS is subject to monitoring by an extension;
- [4. A CPPTS Acknowledgment Form shall be filed with the Board. This form shall indicate that CPPTS providers are subject to the rules contained in this subchapter;]
4. [5.] CPPTS providers shall provide to the Board the address and telephone number of each CPPTS instrument, by location, separated by municipality. Such information shall be submitted to the Board at the time of installation of CPPTS service [as part of the CPPTS Acknowledgment Form] and shall be updated as additional instruments are installed[. This information will be granted confidential treatment]; and
- [6. CPPTS providers shall notify the Board upon disconnection of each CPPTS instrument, on a quarterly basis at the beginning of each calendar quarter, including the location and date of disconnection; and]

5. [7.] CPPTS providers shall provide a list to Board staff of all principals of the firm, [with the following information:
- i. The] including the name, address and telephone number of each principal]; and
 - ii. The percent ownership interest of the principals owning more than five percent].

[14:10-9.5 Additional regulation of incumbent local exchange carriers]

[(a)] (b) In addition to the provisions of N.J.A.C. 14:10-9.3 and 9.4, incumbent LECs, as defined in N.J.A.C. 14:10-[9.2] 1.2, [are subject to the following:

1. The incumbent LEC] shall permit customer retention of telephone numbers that are associated with a customer's incumbent LEC public telephone for use with CPPTS.

[2.] (c) Each incumbent LEC shall submit quarterly reports of CPPTS installation in their service territories to Board staff. Such report shall include the number of installations and disconnections as well as a list containing the name and address of each CPPTS provider by location. Such list shall indicate CPPTS connections separated by municipality. This information will be afforded confidential treatment.

14:10-[9.6] 9.5 Placement and repair of PPTS

(a) Installation of all PPTS instruments shall be in accordance with any applicable local, municipal, county and State requirements.

(b) Upon receipt of a complaint from any authorized local, municipal, county or State official, that a PPTS instrument is in violation of any applicable installation requirement, including, but not limited to, municipal ordinances or State legislation, Board staff shall direct the PPTS provider to comply with such requirements or remove the PPTS instrument within 48 hours. Such removal shall ensure that all necessary repairs are performed so that the street, sidewalk, building, or any other structure where the PPTS [may be] was located, is restored to its exact condition prior to the PPTS installation.

(c) [The Board shall take action against a PPTS provider to rectify non-conformance with this requirement, as provided in N.J.A.C. 14:10-9.3(k).] This section [in no way precludes the ability of] shall not affect the authority of the affected local government entity or the PPTS provider [from seeking] to seek available judicial remedies [prior to removal].

(d) PPTS providers shall make every reasonable effort to repair instruments within 48 hours of notification of a service outage.

14:10-[9.7] 9.6 [Exemption] Special provisions for inmate pay telephone service

(a) Providers of [inmate telephone service] PPTS for use by inmates in government controlled correctional facilities are exempt from the requirements of [set out in] the following [subsections]:

1. N.J.A.C. 14:10-[9.3] 9.2(a) through (g) and (i), which set forth minimum requirements for non-inmate PPTS telephone instruments; and
2. N.J.A.C. 14:10-[9.4] 9.3(a), which sets forth the requirement that every PPTS instrument provide an initial dial-tone.

(b) [Installation] A PPTS provider shall ensure that the installation of inmate telephone service in government controlled correctional facilities [shall be in accordance] complies with any applicable local, municipal, county and/or State requirements imposed by the appropriate governing entity.

[(c) Providers of inmate telephone service in government controlled correctional facilities shall provide a letter of notification to the Board containing a complete description of the service to be provided along with the name of the correctional facility where the service will be provided.]

14:10-[9.8] 9.7 Complaint handling procedures

(a) - (d) (No change.)

SUBCHAPTER 10. INTRALATA TOLL COMPETITION [ON A PRESCRIPTION BASIS]

14:10-10.1 Scope, general provisions

(a) This subchapter applies to [the completion of toll calls, as defined below, within Local Access Transport Areas, or LATAs, located within the State of] any carrier that completes toll calls in New Jersey.

(b) Presubscription is a customer's enrollment with a particular intraLATA telecommunications carrier. If a customer does not enroll with an intraLATA carrier, the customer will be assigned an intraLATA carrier. The Board's Order Approving Presubscription and Proposal of Rules dated December 14, 1995, issued in Docket No. TX94090388, provides that presubscription is the policy of the State of New Jersey. These rules are intended to implement that policy as fully set forth in the Order.

[14:10-10.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Access code" means a code that permits a caller to obtain a connection to the carrier associated with that code, for example, 10XXX or 101XXXX.

"Basic service element", within the context of these rules, means a local exchange carrier network component which is necessary for a competitor to configure its service offering. For example, see FCC's Memorandum Opinion and Order in CC Docket No. 88-2, Phase 1, released December 22, 1988, or as otherwise ordered by the Board.

"Board" means the Board of Public Utilities.

"Full 2-PIC" means a system which allows a consumer to presubscribe to an intraLATA toll carrier that may be different from the consumer's interLATA carrier.

"Interexchange carrier" or "IXC" means a carrier, other than a local exchange carrier, authorized by the Board to provide long-distance telecommunications services.

"InterLATA toll call" means a toll call that originates and terminates in two different LATAs.

"IntraLATA toll call" means a toll call that originates and terminates in a single LATA.

"LATA" means a geographical area which marks boundaries beyond which a Bell Operating Company does not carry telephone calls. (See United States v. Western Electric, 569 F. Supp. 990 (D.D.C. 1983).)

"Local exchange carrier" or "LEC" means a carrier authorized by the Board to provide local telecommunications services, in accordance with N.J.A.C. 14:10-5.2.

"Message telecommunications service" or "MTS" means toll service.

"Presubscription" means the pre-selection of a carrier to complete toll calls without the requirement of dialing an access code, that is, dialing parity.

"Primary interexchange carrier" or "PIC" means the carrier chosen by a consumer to carry that consumer's presubscribed calls.

"Slamming" means an unauthorized change of a consumer's primary interexchange carrier or the failure to execute an authorized change in a consumer's primary interexchange carrier.

"Toll call" means any call outside the local calling area as defined in the LEC tariffs filed with and approved by the Board.

14:10-10.3 Implementation of presubscription

(a) Full Statewide implementation of intraLATA presubscription shall commence on May 5, 1997, subject to (c), (d) and (e) below.]

[(b)] (c) LECs shall adhere to the following business [office] practices:

1. LECs are to process intraLATA PIC change orders within the same time frame as interLATA PIC change orders are processed; and
2. LECs [are precluded from "steering"] shall not encourage or attempt to persuade customers to subscribe to their own intraLATA service, and [are prohibited from dissuading] shall not discourage or attempt to dissuade customers from selecting another carrier.

[(c)] Limited waivers to the requirement to convert all central offices to provide intraLATA presubscription may be granted on a case-by-case basis. Such waiver requests must include specific justification and information regarding when the office will be converted. Waivers will only be granted for just cause as determined by the Board.

(d) For any waiver granted by the Board, and/or if presubscription capability is not provided from a LEC central office in conformance with the requirements set forth in this section, a 55 percent discount on switched access charges for intraLATA (10XXX) minutes completed from the non-converted central offices shall apply to reflect the inferior access provided from such offices. LECs shall revise their tariffs on file with the

Board to reflect the discounted rates by September 4, 1996. No discounts are applicable for 2BESS central offices.]

[(e)] (d) [The implementation of intraLATA toll presubscription shall permit consumers to] A customer may presubscribe to [an] a different intraLATA carrier [that may be different from] than the consumer's interLATA PIC. [Therefore, "Full 2-PIC", as described in N.J.A.C. 14:10-10.2, shall be implemented.

(f) Balloting for intraLATA presubscription shall not be required except in any LEC central office that has not yet been converted to interLATA equal access. At the time of conversion for those central offices, the interLATA ballot shall include a choice of intraLATA toll carriers as well.

14:10-10.4 Cost recovery

(a) The costs of implementing intraLATA toll presubscription shall be paid by all intraLATA toll providers as follows: IXC's shall be responsible for 70 percent and LECs shall be responsible for 30 percent of the total costs. These costs shall be recovered over a five year period, beginning with the commencement date of intraLATA presubscription as provided for in N.J.A.C. 14:10-10.3(a), through an equal access recovery charge (EARC) assessed on IXC's total intrastate toll minutes of use (including both interLATA and intraLATA) for their portion of the total costs and LECs intrastate toll minutes for use for their portion of the total costs.

(b) The only costs to be included in the EARC as described in (a) above are the direct, incremental costs associated with the implementation of intraLATA toll presubscription, with no costs included that would have been incurred without its implementation. Such direct costs include, but are not limited to, switch software, translation costs, and costs to modify customer service and customer records systems and business office practices, to accommodate presubscription.

(c) Any dispute over the cost components described in (b) above shall be resolved by the Board through the use of settlement procedures, including, but not limited to, alternative dispute resolution (ADR) techniques, and/or a proceeding which shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.]

14:10-[10.5] 10.2 [Local exchange safeguards] Responsibilities of LECs

[(a) Since LECs operate as both intraLATA toll competitors and as providers of essential access connections that competitors use to provide their services, LECs shall be subject to the imputation standard contained in N.J.A.C. 14:10-10.7, ensuring that they cannot price their services at a level that is below the access rates charged to IXC's.]

[(b)] (a) LECs [are prohibited from engaging] shall not engage in any discriminatory or anti-competitive practices when processing PIC service orders.

[(c) No telecommunications carrier shall submit to a LEC a primary interexchange carrier change order to change long distance carriers until the order has first been confirmed in accordance with the procedures set forth in N.J.A.C. 14:10-11. To do otherwise results in slamming, as defined in N.J.A.C. 14:10-10.2, a practice which is prohibited by this subchapter.]

(b) [No telecommunications carrier shall submit to a LEC a primary interexchange carrier change order to change long distance carriers until the order has first been confirmed in accordance with the procedures set forth in] All carriers shall comply with the requirements of N.J.A.C. 14:10-11, Anti-slamming. [To do otherwise results in slamming, as defined in N.J.A.C. 14:10-10.2, a practice which is prohibited by this subchapter.]

[(d)] (c) All local exchange carriers [must] shall provide in their [resale] tariffs a requirement that resale customers must comply with the provisions of N.J.A.C. 14:10-10.5(c).

[(e)] (d) [The Board shall monitor the customer service activities of the LECs with regard to new customers and to customers making requests of the LECs to change their intraLATA carrier.] LECs shall maintain customer service statistics and records regarding customer change requests, in accordance with applicable recordkeeping requirements in this chapter, and shall provide such information to Board staff upon request.

[(f) Effective with a LEC's intraLATA toll service being classified as competitive under the Telecommunications Act of 1992 (N.J.S.A. 48:2-21.16 et seq.), the LEC shall attribute to the non-competitive, rate-regulated portion of its business, revenue equal to the imputation amount required by the imputation standard set forth in N.J.A.C. 14:10-10.7.

(g) Upon receipt of any complaint alleging a violation of the provisions in (a) through (f) above, the Board shall investigate such complaint and take whatever action it deems necessary to rectify any non-conformance with such rules.

14:10-10.6 Classification of intraLATA toll service as competitive

(a) LEC intraLATA toll services shall be reclassified as competitive as defined in N.J.S.A. 48:2-21.16 et seq., coincident with the effectuation of full Statewide implementation of intraLATA presubscription, as required in N.J.A.C. 14:10-10.3(c) subject to the imputation standard and procedure for attribution of access charges as described in N.J.A.C. 14:10-10.5(a) and (f).

(b) The MTS service, of any LEC with a Board approved plan for alternative regulation, as provided by N.J.S.A. 48:2-21.18, shall be included in the standards for determining and monitoring competitiveness of services which may be incorporated in the LECs' plans for alternative regulation. In addition, all LECs' MTS services are subject to the standards for monitoring the competitiveness of services provided for in N.J.S.A. 48:2-21.19 and set out in N.J.A.C. 14:10-5.10. LECs' MTS services shall be included in the

quarterly and annual reports for competitive services filed by LECs, are used by the Board to ensure that such services remain competitive.

(c) Following a review of the quarterly and annual reports, as set out in (b) above, should there be a finding that a LEC's MTS service no longer meets the statutory criteria for a competitive service, the Board staff may reclassify the service as non-competitive if it determines sufficient competition is no longer present, pursuant to the provisions of N.J.S.A. 48:2-21.19(d).]

14:10-[10.7] 10.3 Imputation standard

(a) The rates [charged for any LEC] that a LEC charges customers for toll service [(and/or interexchange private line service)] shall equal or exceed the total applicable switched access rates set forth in [this section:] set forth in the LEC's tariff.

[(b) The switched access rate elements in (b)1 through 6 below shall be multiplied by the applicable access minutes associated with toll service offered by the LEC. Access minutes shall be determined by converting the LEC billed minutes to conversation minutes and then to access minutes. Where switched access is used on only one end of a service, the LEC billed minutes shall be converted to applicable access minutes.

1. The LEC's zero-mileage band premium local transport rate element;
2. The LEC's premium local switching rate element;
3. The LEC's premium intercept rate element;
4. The LEC's premium line termination rate element;
5. The LEC's lowest message recording rate to any of its billing services customers, stated on a per-access-minute basis; and
6. The LEC's other non-access incremental costs of completing the call, stated on a per-access minute basis.]

[(c)] (b) Notwithstanding [the provisions of (b)] (a) above, and subject to the condition set forth in [(c)1] (d) below, for a customer which has entered a customer-specific pricing arrangement with the LEC, the LEC may substitute its FCC tariff rates for special access (using the term discount rate that corresponds to the term of the customer specific pricing arrangement) including applicable non-recurring special access rate elements levelized over the term of the contract, for either originating switched access for WATS and [MTS] toll services or terminating switched access for dedicated 800 services.

(c) The special access rate to be imputed in accordance with (e) below shall apply to each equivalent circuit (for example, DS1). For every 2,000 hours, or portion thereof, per month of intraLATA toll calling at a location, the LEC must impute the cost of one circuit (except where a particular customer's usage demonstrates that more traffic could be completed over the facility). The mileage will be rated at 10 miles. [The elements listed in (b)1 through 6 above will apply to the terminating end of WATS and MTS services and the originating end of dedicated 800 services.

1. The LEC's revenues from all customers of a service being provided]

(d) If a LEC provides a service under a customer-specific pricing arrangement in accordance with [paragraph (c)] (b) above [must] , the LEC's revenues from all customers of that service shall, in the aggregate, satisfy the requirements [set forth in (b) above] in this section.

[(d) The price charged for each LEC service using special access shall be greater than the sum of (d)1 through 6 below for each special access connection used; for example, twice for a typical private line circuit. For competitive access services such as Hi-Cap, however, imputation is not applicable.

1. The zero-mileage band of the LEC's special transport rate element;
2. The LEC's special access line rate element;
3. The applicable rate elements for optional features and functions;
4. Any applicable LEC special access surcharge rate element;
5. Any applicable non-recurring special access rate elements levelized over a 24-month period; and
6. The LEC's other non-access incremental costs of providing the service.]

(e) The price charged for each service for which the LEC uses special access shall be the total special access rate set forth in the LEC's tariff.

(f) If the Board orders or approves any changes in the LEC's access rate structure, the LEC shall [be required to] seek Board approval of appropriate changes in the imputation formulas in [(b), (c) and (d) above] this section.

[(f)] (g) Where the LEC structures a package of services to include discounts and/or packaging of noncompetitive services in addition to interexchange calling, the LEC's price for the package of services [must] shall be greater than the amounts described in [(b), (c) and (d) above. plus: where basic service elements are used to provide the discounts or packages, an amount determined by multiplying the pricing units for the basic service elements used times the LEC's tariff price(s) for those basic service elements; and an amount determined by multiplying the LEC's per unit incremental costs for the discounts or packages, excluding those for the basic service elements, times the applicable number of units] this section.

(h) The LEC shall, within 14 calendar days of a request from the IXCs or Board staff, provide information adequate to show compliance with the imputation requirement. The information shall reflect usage data for a one year period, or, if such data is unavailable, for the longest available time period for which the LEC has data.

(i) Pursuant to this imputation requirement, the LEC shall retain interexchange usage data for a rolling 24-month period. The LEC shall not be required to respond to any such request more frequently than once annually, except that the LEC shall be required to respond to any such request that is made in conjunction with the LEC proposing changes to an interexchange service or with the LEC proposing a customer-specific pricing arrangement. As part of any such showing, the LEC shall provide all supporting documentation including dates, data sources and calculations.

(j) The IXCs and Board staff shall have [discovery] rights to examine the documentation and computations underlying the LEC's data. To the extent that the LEC's [showing] data includes information it deems proprietary, [such information shall be made available subject to the following provisions contained] the LEC may make a request for a confidentiality determination under the Board's OPRA rules in N.J.A.C. 14:1-12. [:

1. Information deemed by a party to be proprietary in nature shall be so marked by stamp or otherwise clearly identified as such. Proprietary information described in its subsection means trade secrets and other confidential, nonpublic, or privileged information, as defined by the LEC submitting the data.
2. Except when proprietary information is in the possession of the Board, exclusive custody of the proprietary information shall remain with the party submitting such information. The sole exception shall be the agreement by the submitting party to furnish each other party with a single copy of the proprietary information, which information shall be kept under seal when not under review.
3. The examination of the proprietary data provided to a party shall be solely by the counsel of record and/or any lawyer employed by or any employee of said counsel, expert consultants retained by a party, Board staff, the Ratepayer Advocate and staff, employees, and any expert consultants which the Ratepayer Advocate may retain, and any employee of a party whose review of the proprietary information is necessary, provided such persons have executed an acknowledgment of the handling of proprietary information in compliance with this subchapter and have provided the submitting party with an executed copy of the acknowledgment. No other disclosure shall be made to any person or entity except with the express written consent of counsel for the submitting party.
4. The proprietary data delivered or otherwise made available to a party pursuant to this subchapter, any photographic or other copies made thereof, as well as notes taken and other information obtained as a result of examination of the proprietary data, shall be disclosed only to persons who have executed the requisite acknowledgment, shall be kept in confidence, shall not be disclosed to anyone involved in competitive decision making for any party, and shall not be opened to public inspection. No person who may be entitled to receive, or which is afforded access to any proprietary information, shall use or disclose such information for the purposes of business or competition, or any purpose other than the preparation for and conduct of any administrative or judicial review thereof. Upon conclusion of the proceedings, all proprietary information which has been submitted pursuant to this subsection shall be returned to the submitting party. This requirement does not apply to the Board or its staff.
5. A party shall have no obligation to preserve the confidential nature of any information that it can demonstrate and document to the submitting party in advance of disclosure that the subject information:
 - i. Was previously known to the party free of any restriction on use and disclosure;
 - ii. Is received from a third party without restrictions on use or disclosure and without breach of any terms of this subchapter;
 - iii. Is disclosed to third parties by the submitting party without restrictions on use and disclosure;

- iv. Is or becomes publicly available by authorized disclosure by the submitting party without any restrictions on use or disclosure;
- v. Is independently developed by the party;
- vi. Is approved for release by written authorization of the submitting party.
- 6. If documents and materials designated as proprietary in nature are to be included in any papers filed with the Board, such papers shall be labeled "CONFIDENTIAL--SUBJECT TO ORDER OF THE BOARD" and shall be filed under seal until further order of the Board.}
- 7. The review described in this subsection shall not affect the implementation date of any customer specific pricing contract.]

[(g)] (k) Should the data demonstrate that the LEC is not in compliance with the imputation requirement, upon receipt of notice from the IXCs or Board staff, the LEC shall, within 30 days, either increase the price(s) for its interexchange service to bring the LEC into compliance, or petition the Board for a compliance ruling. In any such proceeding, the [LEC shall not argue] the Board shall not accept or consider any argument that this imputation requirement should be changed.

SUBCHAPTER 11. [TELECOMMUNICATIONS SERVICE PROVIDERS] ANTI-SLAMMING REQUIREMENTS FOR TSPs

14:10-11.1 Scope

(a) This subchapter is intended to protect against unauthorized changes or "switches" in a customer's primary telecommunications carrier, also called a telecommunications service provider, as these terms are defined at N.J.A.C. 14:10:1-1.2. This subchapter utilizes the term "telecommunications service provider" or "TSP" in place of the term "telecommunications carrier" in order to be consistent with FCC anti-slamming rules. The two terms have the same meaning.

(b) This subchapter applies to all TSPs, including LECs, telephone utilities, and resellers, as these terms are defined at N.J.A.C. 14:10-1.2.

(c) If a TSP has reasonable notice that a person representing or acting on behalf of the TSP has violated this subchapter, the TSP shall immediately take measures sufficient to prevent any further violations. For the purpose of this subsection, "reasonable notice" includes, but is not limited to, receipt by the TSP of one or more complaints of a violation.

[14:10-11.1] 14:10-11.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Agent" means any person [or entity], as defined at N.J.A.C. 14:3-1.1, including, but not limited to, employees, servants or marketers, acting on behalf of a TSP in order to bring

about, modify, affect performance of, or terminate mutual obligations between a TSP and the customer.

["Authorized carrier" means any telecommunications carrier that submits a change on behalf of a subscriber in the subscriber's selection of a provider of telecommunication service with the subscriber's authorization verified in accordance with the procedures specified in this subchapter.

"Authorized TSP change" means a change in a customer's selection of a provider of telecommunications service that was made with authorization verified in accordance with the verification procedures specified in this subchapter.

"Board" means the New Jersey Board of Public Utilities.

"Commission" means the Federal Communications Commission.]

"Authorized TSP" means a TSP that a customer has chosen as its provider of a telecommunications service, through an authorization that has been verified in accordance with this subchapter.

"Customer" means a person that meets any one or more of the following criteria:

1. - 3. (No change.)

["Division" means the Division of Consumer Affairs within the New Jersey Department of Law and Public Safety.]

"Executing TSP" means any TSP that [affects] receives a change order that complies with this subchapter and carries out a request that a customer's [telecommunications carrier be changed] TSP be switched. Any [carrier] TSP may be treated as an executing [carrier] TSP, if it is responsible for any unreasonable delays in the execution of [carrier changes] TSP switches, or for the execution of unauthorized [carrier changes] TSP switches, including fraudulent authorizations [it will consider] in violation of this subchapter.

["InterLATA telecommunications service" means telecommunications service which originates in one LATA and terminates in a different LATA.

"IntraLATA telecommunications service" means telecommunications service which originates and terminates within the same LATA.

"Intrastate telecommunications service" means a telecommunications service which remains within the boundaries of New Jersey, regardless of the specific routing of the call.

"Local access and transport area" or "LATA" means a geographic area which marks the boundaries beyond which a Bell Operating Company does not carry telephone calls. See United States v. Western Electric, 569 F. Supp. 990 (D.D.C. 1983).

"Local exchange telecommunications service" means telecommunications service which originates and terminates within a geographic area established and described by a local exchange carrier's tariffs filed with the Board of Public Utilities.]

"Primary TSP" means the customer's chosen [provider of] TSP for a telecommunications service for which there are multiple providers. To the extent permitted by statute, rule or Board order, a customer may select a primary TSP for intrastate interLATA, intraLATA toll, and local exchange telecommunications services, and may select the same or different TSP for each type of service.

["Slamming" means an unauthorized change of a customer's primary TSP or the failure to execute an authorized change in a customer's primary TSP.

"Soliciting telecommunications service provider" means a telecommunications service provider that seeks, either directly or through an agent, a customer's authorization to terminate said customer's existing primary TSP and subsequently transfer the customer to the soliciting TSP.]

"Submitting TSP" means any TSP that:

1. [Requests on the behalf of a customer to change the primary TSP.] Submits a change order on behalf of a retail or wholesale customer, in order to request a switch in the customer's primary TSP; and
2. Seeks to provide retail telecommunications services to the [end user] customer.

["Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

"Telecommunications service provider" or "TSP" means any individual, firm, joint venture, partnership, corporation, association, public utility, cooperative association, joint stock association and includes any trustee, receiver, assignee, or representative which is a provider of intrastate telecommunications services, whether interLATA, intraLATA toll or local exchange telecommunications services, to an end-user customer. This term includes resellers, whether switched or switchless, of telecommunications services.]

"Unauthorized [change] switch" means a change in a customer's selection of a [provider of telecommunications service] TSP, that was made without an authorization that was verified in accordance with [the verification procedures specified in] this subchapter.

[14:10-11.2] 14:10-11.3 Solicitation of [customer's] authorization [for service termination and transfer] to change TSPs

(a) All solicitations by a TSP [or its agent] for a customer's authorization to terminate that customer's existing primary TSP and to [subsequently] transfer said customer to a new primary TSP shall include a clear and conspicuous statement of the following:

1. The identity of the soliciting TSP;
- [1.] 2. That the solicitation seeks the customer's authorization to switch [or change] the customer's TSP from the customer's existing primary TSP to the soliciting TSP; [and]
3. The types of services that will be affected by the switch; for example, local, regional, and/or long distance;
- [2.] 4. The soliciting TSP's current complete rates, fees, terms and conditions; and
5. All information [needed] that the soliciting TSP will require from the customer in order to assume accurate billing [and TSP identification] for the particular services [proposed] involved in the switch.

(b) [No] When soliciting a customer's authorization to switch TSPs, a reseller [of intrastate telecommunications services, or any agent acting on its behalf,] shall not disclose the identity of the [underlying carrier] TSP whose telecommunications service is being resold, unless the information is provided in a truthful, non-misleading manner in accordance with this subchapter. The reseller shall identify itself as a reseller, disclose that it is not the [current provider] customer's primary TSP, and advise the customer that accepting [it as his or her carrier] the reseller's offer will change the customer's primary TSP.

[14:10-11.3 Verification of change orders for telecommunications service providers

(a) No submitting TSP, or any person, firm or corporation acting as an agent or representative on behalf of such submitting TSP, shall submit to an executing TSP, or implement by itself, an order changing a customer's primary TSP unless and until the order has first been verified in accordance with this subchapter.

(b) Verification of any order changing a customer's primary TSP shall be in conformance with one of the following procedures as set forth in the Commission's rules at 47 C.F.R. §64.1150 and 64.1160, as amended or supplemented, which regulations are incorporated herein by reference, copies of which may be obtained upon request from the Secretary of the Board:

1. The submitting TSP has obtained the customer's written or electronically signed authorization in a form that satisfies the following requirements:]

14:10-11.4 Obtaining verified customer authorization, submitting a change order

- (a) To switch a customer from one primary TSP to another, the acquiring TSP shall submit a change order, which complies with this subchapter, to an executing TSP.
- (b) No TSP shall submit a change order on behalf of a customer without first obtaining a verified authorization from the customer in accordance with this subchapter. Such an authorization may be obtained through any of the following means:
1. The customer's signature, either written or electronic, on a letter of agency, in accordance with N.J.A.C. 14:10-11.5;
 2. The customer's verbal authorization obtained by telephone in accordance with N.J.A.C. 14:10-11.6; or
 3. A third party verification that meets the requirements at N.J.A.C. 14:10-11.6.
- (c) The requirements in this section and in N.J.A.C. 14:10-11.5 and 11.6 are in addition to the FCC slamming requirements at 47 C.F.R. §64.1100 through 1190, as amended or supplemented, which regulations are incorporated herein by reference. Should there be a difference between the FCC regulations and these rules, the more stringent provision shall govern.
- (d) If a TSP sells more than one type of telecommunications service (for example, local exchange, intraLATA toll, and interLATA toll), that TSP shall obtain separate authorization from the customer for each separate access line being switched and each separate service sold, although the authorizations may be verified within the same solicitation. Each authorization shall be verified separately from any other authorizations obtained in the same solicitation, even if the same primary TSP is chosen to provide two or more telecommunications services.
- (e) A TSP shall submit a primary TSP change order on behalf of a customer within sixty days after obtaining the verified authorization for that customer.
- (f) Notwithstanding N.J.A.C. 14:10-1.3, a submitting TSP shall maintain and preserve records of all verifications of customer authorization for a minimum of three years after obtaining the verification.

14:10-11.5 Letters of agency

- (a) A TSP that elects to use a letter of agency to obtain a verified authorization for a change in a customer's TSP shall ensure that the letter of agency complies with all requirements of the FCC rules governing letters of agency at 47 C.F.R. §64.1130, as amended and supplemented, which is incorporated by reference herein. As of {effective date of this rule}, the substance of 47 C.F.R. §64.1130 is set forth at 1 through 12 below: redo x-refs.
- [i.] 1. A TSP may use a letter of agency to obtain written or electronically signed authorization and or verification of a customer's request to change his/her primary TSP selection. A letter of agency that does not conform with this section is invalid for purposes of this subchapter;

- [ii.] 2. The letter of agency shall be a separate (or an easily separable) document or located on a separate screen or web page containing only the authorizing language described in [(b)1v] (a)5 below having the sole purpose of authorizing a TSP to initiate a primary TSP change. The letters of agency shall be signed and dated by the customer who subscribes to the telephone line(s) requesting the primary TSP change;
- [iii.] 3. The letter of agency shall not be combined on the same document, screen, or web page with inducements of any kind. For example, it cannot be used in combination with sweepstakes offerings, entries or boxes.
- [iv.] 4. Notwithstanding (b)1ii and iii above, the letter of agency may be combined with check(s) that contain only the required letter of agency language as prescribed in (b)1v below and the necessary information to make the check(s) a negotiable instrument. The letter of agency check(s) shall not contain any promotional language or material. The letter of agency check(s) shall contain, easily readable boldface type on the front of the check(s), a notice that the customer is authorizing a primary TSP change by cashing the check(s). The letter of agency language shall be placed near the signature line on the back of the check;
- [v.] 5. At a minimum, the letter of agency shall be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:
 - [(1)] i. The customer's billing name and address and each telephone number to be covered by the primary TSP change order;
 - [(2)] ii. The decision to change the primary TSP from the current TSP to the submitting TSP;
 - [(3)] iii. That the customer designates (name of submitting TSP) to act as the customer's agent for the primary TSP change;
 - [(4)] iv. That the customer understands that a different TSP may be designated for each of the customer's services, that is, interLATA, intraLATA toll or local exchange. The letter of agency shall contain separate check-off boxes for each such choice, with only one signature line at the bottom, although a separate letter of agency for each choice is not necessary; and
 - [(5)] v. That the customer understands that each change of a primary TSP selection the customer chooses may involve a charge to the customer. The customer is to be advised of the amount of the charge up to the maximum;
- [vi.] 6. Any TSP designated in a letter of agency as a primary TSP shall be the TSP directly setting the rates for the customer;
- [vii.] 7. Letters of agency shall not suggest or require that a customer take some action in order to retain the customer's current TSP;
- [viii.] 8. If any portion of a letter of agency is translated into another language then all portions of the letter of agency shall be translated into that language. Every letter of agency shall be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency;
- [ix.] 9. Letters of agency submitted with an electronically signed authorization shall include the consumer disclosures required by §101(c) of the Electronic

Signatures in the Global and National Commerce Act. (Public Laws 106-229) (E-sign Act);

[x.] 10. TSPs utilizing electronically signed letters of agency shall employ encryption and/or other security measures in keeping with the best practices used for Internet transactions. TSPs shall also provide notice to subscribers regarding the level of security that applies to the submission of such electronically signed letters of agency.

[xi.] 11. A TSP shall submit a primary TSP change order on behalf of a subscriber within [60] sixty days of obtaining a written or electronically signed letter of agency; and

[xii.] 12. Letters of agency submitted with electronically signed authorizations shall comply with all relevant provisions of the Electronic Signatures in the E-sign Act and the Uniform Electronic Transactions Act, N.J.S.A. 12A:12-1 et seq.

[2. The] (b) A submitting TSP [has obtained the] may also obtain a customer's electronic authorization to submit the primary TSP order[. Such authorization shall be placed from the telephone number(s) on which the primary TSP is to be changed and shall confirm the information required in (b)1 above. Submitting TSP selecting to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) shall connect a customer to a voice response unit or similar mechanism that records the required information regarding the primary TSP change, including automatically recording the originating automatic numbering identification; or] in accordance with 47 CFR §64.1120(c)(2).

14:10-11.6 Third party verification of authorization

(a) A submitting TSP may obtain a customer's authorization to submit a change order on the customer's behalf through an independent third party verification in accordance with this section.

[3. An appropriately qualified independent third party has obtained the customer's oral authorization to submit the primary TSP change order which confirms and includes appropriate verification data.] (b) The person that obtains a third party verification shall be independent of both the customers' existing primary TSP and the TSP to which the customer may switch. The [independent] third party shall not be owned, managed, controlled, or directed by the TSP or the TSP's marketing agent; shall not have any financial incentive to confirm primary TSP change orders for the TSP or the TSP's marketing agent; and shall operate in a location physically separate from the TSP or the TSP's marketing agent. [The content of the verification shall include clear and conspicuous confirmation that the customer has authorized primary TSP change.]

[i. Automated] (c) A TSP may use third party verification systems and three-way conference calls [may be used] for verification purposes so long as the requirements of [(b) 3ii, iii, iv, below] this section are satisfied. Automated systems shall provide customers with the option to speak with a live person at any time during the call.

[ii.] (d) A TSP or a TSP's sales representative initiating a three-way conference call or a call through an automated verification system shall drop off once the three-way connection has been established, unless the third party verifier obtains a waiver from this requirement from the FCC.

[iii.] (e) All third party verification methods shall elicit, at a minimum, all of the following:

1. Confirmation of the identity of the customer (for example, the customer's date of birth or social security number);
2. The date of the verification;
3. [confirmation] Confirmation that the person on the call is authorized to make the TSP [change] switch;
4. [confirmation] Confirmation that the person on the call wants to make the TSP [change] switch;
5. [the] The names of the TSPs affected by the change;
6. Each of the telephone numbers [to be switched] that will be affected by the switch; and
7. [the] The types of service [involved.] being switched.

(f) Third party verifiers shall not market the TSP's services by providing additional information during the verification call, including information regarding preferred [carrier] TSP freeze procedures.

[iv.] (g) All third party verifications shall be conducted in the same language that was used in the underlying sales transaction and shall be recorded in their entirety. [In accordance with N.J.A.C. 14:10-11.5(d)1i, submitting TSPs shall maintain and preserve audio records of verification of customer authorization for a minimum period of three years after obtaining such verification. Automated systems shall provide customers with an option to speak with a live person at any time during the call.

(c) The verification requirements of this subchapter apply to all primary TSP change requests, regardless of whether a request is initiated by the customer or the TSP, its agents or representatives.]

(h) If a customer has any questions regarding the switching of telecommunications service, the rates, or any other matter; which a third party verifier is not qualified or not authorized to answer under this subchapter, the third party verifier shall:

1. Inform the customer that the third party verifier is not qualified or authorized to answer the question;
2. Offer to terminate the verification and instruct the customer on how to contact the TSP's sales agent to answer the question; and
3. Terminate the verification if the customer requests it, or, if the customer clearly consents to continue the call without having the question answered, continue the call.

(i) If a verification is terminated in accordance with the verification, a new verification may be started only after the TSP's sales agent has fully responded to the customer's

questions.

[(d)] (j) Each customer selection of a primary TSP for local, intraLATA toll, or interLATA telecommunications service shall be verified separately, in accordance with this subchapter, even if the same primary TSP is chosen to provide two or more telecommunications services. For example, a single authorization for changes of local, intraLATA, and long distance service is not valid. The TSP must obtain a separate authorization for change of local service, a separate authorization for change of intraLATA service, and a separate authorization for long distance.

[(e)] TSPs shall provide customers the option of using one of the authorization and verification procedures specified in (b) above in addition to an optional electronically signed authorization and verification procedure under (b)1 above.]

[(f)] (k) A TSP may acquire, through a sale or transfer, either part or all of another TSP's customer base, without obtaining each customer's authorization and verification, by complying with the [Commission] rules set forth at 47 C.F.R. §64.1120(e), as [now constituted or as may hereafter be] amended and supplemented, which are incorporated herein by reference.

[(l)] Copies of letter notifications filed with the [Commission] FCC pursuant to 47 C.F.R. §64.1120(e)(1) and (2) shall also be filed with the Board.

[14:10-11.4] 14:10-11.7 Requirements for the executing TSP [change order procedures]

(a) [Notwithstanding the time frame for execution of primary TSP change orders set forth in this section, all] A TSP that receives a primary TSP change [orders] order that has been solicited and verified in compliance with this subchapter shall [be executed] execute the requested TSP change as soon as possible, and [without unreasonable delay] in no case later than three business days after a change order for toll services is submitted, whether intraLATA or interLATA; and no later than 30 business days after a change order for local exchange service is submitted.

[(b)] Upon receipt of a primary TSP change order which complies with this subchapter, the executing TSP, person, firm or corporation acting as an agent or representative on behalf of a TSP, shall, on behalf of the customer, promptly and without unreasonable delay, process the TSP change order to assure that the order is completed and service can be provided by the submitting TSP no later than three business days for toll services, whether intraLATA or interLATA and no later than 30 business days for local exchange service.]

(b) An executing TSP is not responsible for verifying whether or not a switch is authorized. The executing TSP merely performs the switch in a timely manner after receiving a change order from the submitting TSP.

(c) The [30 day period] thirty-day deadline set forth in (a) above for [completing] executing local exchange service [changes] change orders may be extended for good cause by [the] Board [for an additional 30 day period] staff. The extension shall last for thirty days, unless [otherwise] a different time period is agreed to by the customer[, as agreed to by] and the TSPs involved in the [change,]switch; or if a different time period is required by Federal law or rule.

(d) The 30 day [period] deadline set forth in (c) above for local exchange service may also be [reduced] shortened by order of the Board pursuant to N.J.S.A. 56:8-88.

[The time interval for local exchange service order completion by Verizon New Jersey to the submitting TSP is set forth by Board approved New Jersey Carrier to Carrier Guidelines. (See I/M/O the Investigation Regarding Local Exchange Competition for Telecommunications Services and I/M/O the Board's Investigation Regarding the Status of Local Exchange Competition in New Jersey, Docket Nos. TX95120631 and TX98010010, May 25, 2000).]

[(c)] (e) When an authorized change of a TSP is made, the [new] acquiring TSP shall notify the [new] customer of the change within 30 days of submitting the primary TSP change order to the executing carrier that serves the customers.

(f) The notice required under (e) above shall be separate from the [primary] acquiring TSP's billing statement and shall clearly and conspicuously include at least the following information:

1. That the information is being sent to confirm a primary telecommunications service provider change order [placed by the customer] , and [confirming] to confirm the type of service being changed, that is, local, intraLATA or interLATA services;
2. The name of the customer's [current] former telecommunications service provider, if that information is known to the [new] acquiring TSP;
3. The name of the [newly requested] acquiring telecommunications service provider, with telephone number and address;
4. A description of any and all terms, conditions or charges that [shall be incurred] the customer will pay for the change and for service from the new TSP; and
5. The telephone number and address of both the Board of Public Utilities Division of Customer [Relations] Assistance, at Two Gateway Center, Newark, New Jersey 07102, 1 (800) 624-0241[,]; and the Division of Consumer Affairs Consumer Service Center, at 124 Halsey Street 7th Fl, PO Box 45027, Newark, New Jersey (973) 504-6200.

[(d)] (g) The [TSP, or other person, firm or corporation acting as an agent or representative on behalf of a] submitting TSP[,], shall make available to any customer, upon written or verbal request, for the period records are maintained, the [TSPs] TSP's verification of [confirmation of] that customer's TSP change order. However, [in those instances where] if the customer is unable to obtain the verification from the submitting

TSP, then the executing TSP [will be required to] shall provide it to the customer, if such information is in its possession.

14:10-[11.5] 11.8 Unauthorized service termination and transfer (slamming)

[(a) In construing and enforcing the provisions of this subchapter, the act of any person, firm or corporation acting as an agent or representative on behalf of a TSP, within the parameters of the working agreement set forth by the TSP, shall be deemed to be the act of that TSP. A person or entity representing or acting as an agent for a TSP shall be construed as a TSP subject to all the provisions of this subchapter.

(b) Upon reasonable notice that an agent of a TSP is violating this subchapter, the TSP shall immediately take measures sufficient to prevent further violations of this subchapter. The term "reasonable notice" shall be construed to include, but not be limited to, receipt by the TSP of any complaint of violations of this subchapter.]

[(c)] (a) In the event a customer notifies the Board that slamming, as defined in this subchapter, has allegedly occurred, that portion of the bill that relates to the alleged slamming shall be considered in dispute pursuant to N.J.A.C. 14:3-7.13. In addition, in the case of a residential customer, the basic residential local telephone service provider, as defined in N.J.A.C. 14:3-7.17, shall neither apply residual or partial payments to the customer's charges for the slammed service nor discontinue the customer's slammed service because of nonpayment. A customer is required to pay all interLATA and intraLATA toll and local exchange charges that are not affected by the unauthorized TSP change.

[(d) Changes in customer carrier selections shall be in conformance with Commission rules at 47 C.F.R. §64.1100 as amended or supplemented, as follows:

1. No TSP shall submit or execute a change on the behalf of a customer in the customer's selection of a TSP except in accordance with the procedures prescribed in this subchapter.
 - i. No submitting TSP shall submit a change on behalf of a customer in the customer's selection of a TSP prior to obtaining authorization from the customer, and verification of that authorization in accordance with the procedures prescribed in N.J.A.C. 14:10-11.3. For a submitting TSP, compliance with the verification procedures prescribed in this subchapter shall be defined as compliance with this paragraph and (d)2 below, as well as with N.J.A.C. 14:10-11.3. The submitting TSP shall maintain and preserve records of verification of customer authorization for a minimum period of three years after obtaining such verification. The record retention period provides customers three years within which to file a slamming complaint.
 - ii. An executing TSP shall not verify the submission of a change in the customer's selection of a TSP received from a submitting TSP. For an executing TSP, compliance with the procedures prescribed in this subchapter shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting TSP.

2. Where a TSP is selling more than one type of telecommunications service (for example, local exchange, intraLATA toll, and interLATA toll), that TSP shall obtain separate authorization from the customer for each service sold, although the authorizations may be made within the same solicitation. Each authorization shall be verified separately from any other authorizations obtained in the same solicitation. Each authorization shall also be verified in accordance with the verification procedures prescribed in this subchapter.]

[(e)] (b) Reimbursement procedures and TSP liability for slamming shall be in conformance with [Commission] FCC rules at 47 C.F.R. §64.1140, and §§64.1160 and 1170 as amended or supplemented[.]. As of {effective date of these rules}, the substance of those regulations is as follows:

1. Any submitting TSP that violates the procedures prescribed in this subsection shall be liable to the primary TSP in an amount equal to 150 percent of all charges paid to the submitting TSP by such customer after such violation, as well as for additional amounts as prescribed in [(e)](b)4 below. The remedies provided in this subsection are in addition to any other remedies available by law[.];
2. Any customer whose selection of a primary TSP is [changed] switched without authorization verified in accordance with the procedures set forth in [N.J.A.C. 14:10-11.3] this subchapter is absolved from liability for charges as follows:
 - i. If the customer has not already paid charges to the unauthorized TSP, the customer is absolved of liability for charges imposed by the unauthorized TSP for service provided during the first 30 days after the unauthorized [change] switch. Upon being informed by a customer that an unauthorized [change] switch has occurred, the recipient of the call, that is, the authorized carrier, the unauthorized TSP, or the executing TSP, shall inform the customer of this 30-day absolution period. Any charges imposed by the unauthorized TSP on the customer for service provided after this 30-day period shall be paid by the customer to the authorized TSP at the rates the customer was paying to the authorized carrier at the time of the unauthorized [change] switch in accordance with [the provisions of] [(e)](b)3v below[.];
 - ii. If the customer has already paid charges to the unauthorized carrier, and the authorized TSP receives payment from the unauthorized TSP as provided for in [(e)](b)1 above, the authorized carrier shall refund or credit to the customer any amounts determined in accordance with the provisions of [(e)](b)4vi below[.]; and
 - iii. If the customer has been absolved of liability as prescribed by this subsection, the unauthorized TSP shall also be liable to the customer for any charge required to return the customer to his or her properly authorized carrier, if applicable[.];
3. Absolution procedures where the customer has not paid charges are as follows:
 - i. This paragraph shall only apply after a customer has alleged that an unauthorized [change, as defined by N.J.A.C. 14:10-11.1,] switch has occurred and the customer has not paid charges to the allegedly

- unauthorized TSP for service for 30 days, or a portion thereof, after the unauthorized [change] switch is alleged to have occurred[.];
- ii. An allegedly unauthorized TSP shall remove all charges incurred for service provided during the first 30 days after the alleged unauthorized [change] occurred, as defined by N.J.A.C. 14:10-11.1,] switch from a customer's bill upon notification that such unauthorized [change] switch is alleged to have occurred[.];
 - iii. An allegedly unauthorized TSP may challenge a customer's allegation that an unauthorized [change as defined by N.J.A.C. 14:10-11.1] switch has occurred. An allegedly unauthorized TSP choosing to challenge such allegation shall immediately notify the complaining customer that: the unauthorized TSP is required to file the challenge with the Board within 30 days of the date of removal of charges from the complaining customer's bill in accordance with [(e)](b)3ii above. The TSP, upon investigation, is required to provide the Board with the name, address, phone number of the customer, the date of the alleged slam, the name of the unauthorized TSP to which service was switched, the type of services that were switched, and any evidence to substantiate the TSP's position. The alleged unauthorized TSP may reinstate charges to a customer's bill which were removed pursuant to the provisions of [(e)](b)3ii above upon notice that an investigation was completed by the Division of Customer Assistance that determined the [change] switch was authorized[.];
 - iv. If it is determined after reasonable investigation that an unauthorized [change] switch, as defined by N.J.A.C. 14:10-11.1, has occurred, the Board or its designees will issue a notice indicating that the customer is entitled to absolution from the charges incurred during the first 30 days after the unauthorized TSP [change] switch occurred, and neither the authorized nor unauthorized TSP may pursue any collection against the customer for those charges[.];
 - v. If the customer has incurred charges for services provided for more than 30 days after the unauthorized TSP [change] switch, the unauthorized TSP shall forward the billing information for such services to the authorized TSP, which may bill the customer for such services using either of the following means:
 - (1) The amount of the charge may be determined by a re-rating of the services provided based on what the authorized TSP would have charged the customer for the same services had an unauthorized [change, as described in N.J.A.C. 14:10-11.1,] switch not occurred; or
 - (2) The amount of the charge may be determined using a 50 percent proxy rate as follows: Upon receipt of billing information from the unauthorized TSP, the authorized TSP may bill the customer for 50 percent of the rate the unauthorized TSP would have charged the customer for the services provided. However, the customer shall have the right to reject use of this 50 percent proxy method and require that the authorized carrier perform a re-rating of the services provided, as described in [(e)](b)3v(1) above[.] ;
 - vi. If the unauthorized TSP received payment from the customer for services provided after the first 30 days after the unauthorized [change]switch

- occurred, the obligations for payments and refunds provided for in this subsection shall apply to those payments[.]; and
- vii. If the Board or its designee determines after reasonable investigation that the TSP [change]switch was authorized, the TSP may re-bill the customer for charges incurred[.]; and
4. Reimbursement procedures where the customer has paid charges are as follows:
- i. The procedures in this paragraph shall only apply after an unauthorized [change, as defined by N.J.A.C. 14:10-11.1,] switch has occurred and the customer has paid charges to an allegedly unauthorized TSP[.];
- ii. If the Board or its designee had determined after reasonable investigation that an unauthorized [change, as defined by N.J.A.C. 14:10-11.1,] switch has occurred, it shall issue a notice directing the unauthorized carrier to forward to the authorized TSP the following:
- (1) An amount equal to 150 percent of all charges paid by the customer to the unauthorized TSP; and
- (2) Copies of any telephone bills from the unauthorized carrier to the customer[.];
- iii. A copy of the notice under [(e)](b)4ii above shall be sent to the customer, the unauthorized TSP, and the authorized TSP[.];
- iv. Compliance with [(e)](b)4ii and iii above does not preclude the Board from seeking additional administrative remedies where deemed appropriate[.];
- v. Within 10 days of receipt of the amount provided for in [(e)](b)4ii(1) above, the authorized TSP shall provide a refund or credit to the customer in the amount of 50 percent of all charges paid by the customer to the unauthorized TSP. The customer has the option of asking the authorized TSP to re-rate the unauthorized carrier's charges based on the rates of the authorized TSP and, on behalf of the customer, seek an additional refund from the unauthorized TSP, to the extent that the re-rated amount exceeds the 50 percent of all charges paid by the customer to the unauthorized TSP. The authorized TSP shall also send notice to the Board Secretary and the Director of Customer Assistance that it has given a refund or credit to the customer[.];
- vi. If an authorized TSP incurs billing and collection expenses in collecting charges from the unauthorized TSP, the unauthorized TSP shall reimburse the authorized TSP for reasonable expenses[.];
- vii. If the authorized TSP has not received payment from the unauthorized TSP as required by [(e)](b)4v above, the authorized TSP is not required to provide any refund or credit to the customer. The authorized TSP shall, within 45 days of receiving the notice or decision as described in [(e)](b)4ii and iii above, inform the customer and the Director of Customer Assistance if the unauthorized TSP has failed to forward to it the appropriate charges, and also inform the customer of his or her right to pursue a claim against the unauthorized TSP for a refund of all charges paid to the unauthorized TSP[.]; and
- viii. Where possible, the properly authorized TSP shall reinstate the customer in any premium program in which that customer was enrolled prior to the unauthorized [change]switch, if the customer's participation in that program

was terminated because of the unauthorized [change]switch. If the customer has paid charges to the unauthorized TSP, the properly authorized TSP shall also provide or restore to the customer any premiums to which the customer would have been entitled had the unauthorized [change]switch not occurred. The authorized TSP must comply with the requirements of this paragraph regardless of whether it is able to recover from the unauthorized TSP any charges that were paid by the customer.

[(f)] (c) All investigation procedures are as follows:

1. When an executing or primary TSP is informed of an unauthorized TSP [change]switch by a customer, it shall immediately notify both the authorized and allegedly unauthorized TSP of the incident. This notification shall include the identify of both TSPs[.];
2. Any TSP, executing, authorized, or allegedly unauthorized, that is informed by a customer or an executing TSP of an unauthorized TSP [change]switch. The TSP can attempt to resolve the complaint to the satisfaction of the customer. If the TSP is unable to resolve the complaint, the TSP must send the complaint to the Board. The complaint must include the name, address and telephone number of the customer; the date the alleged unauthorized switch occurred; and the name of the alleged unauthorized TSP to which the customer was switched; the type of service switched; and any evidence to substantiate the TSP's position. Nothing in this subsection shall prevent an allegedly unauthorized TSP from resolving the complaint by providing the customer with all relief to which the customer is entitled under this subchapter[.];
3. Upon receipt of an unauthorized TSP [change]switch complaint, the Board or its designee will notify the allegedly unauthorized TSP of the complaint and require the TSP to remove all unpaid charges for the first 30 days after the slam from the customer's bill pending a determination of whether an unauthorized [change]switch, as defined by N.J.A.C. 14:10-11.1, has occurred, if it has not already done so[.]; and
4. Not more than 30 days after notification of the complaint, the alleged unauthorized TSP shall provide to the Board or its designee a copy of any valid proof of verification of the TSP [change]switch. This proof of verification shall contain clear and convincing evidence of a valid authorized TSP [change, as that term is defined in this subchapter]switch. The Board or its designee will determine whether an unauthorized [change, as defined by N.J.A.C. 14:10-11.1,]switch has occurred using such proof and any evidence supplied by the customer. Failure by the submitting TSP to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.

[(g)] (d) Each TSP [authorized to provide telecommunications services in New Jersey] shall submit to the Division of Customer Assistance three copies of the TSP slamming [complaint] activity report form identified in the subchapter Appendix, incorporated herein by reference.

- [1.] By each March 1, the report shall cover the preceding period between July 1 and December 31. Each September 1, the report shall cover the preceding

January 1 through June 30. Reporting shall commence on September 1, covering September 2[, 2003] through June 30 of the following year. Reports filed on March 1 shall cover the period between July 1 and December 31.

[2. Each] (e) In addition to the TSP slamming activity report required under (d) above, each TSP [authorized to provide telecommunications services in New Jersey] shall, upon request, submit to the Board and the Division three copies of a report of all slamming complaints received, and the resolution thereof indicating the customers' name, address, telephone number, the type of service that was slammed, and the submitting TSP or agent that requested the alleged unauthorized switch of the customer's primary TSP.

[14:10-11.6 Primary] 14:10-11.9 TSP freezes

(a) A [primary] TSP freeze is an additional restriction, over and above the requirement for verified authorization for a TSP switch, that prevents a [change] switch in [a customer's] an end-user's primary TSP without [the express consent of the customer] the end-user's verified authorization for both of the following:

1. The lifting of the TSP freeze; and
2. The switch itself.

(b) All [TSP's] TSPs responsible for implementing changes of primary TSPs shall [be required to] offer a plan to freeze and lift the freeze of the customer's local, intraLATA toll or interLATA primary TSPs upon the customer's request. [TSPs shall adopt a primary TSP freeze plan which complies with this subchapter by August 18, 2000.]

(c) Customer requests for the imposition or lifting of primary TSP freezes shall be honored without charge.

(d) A TSP freeze applies to each end-user, regardless of the customer of record.

(e) An end-user's authorization to lift a freeze does not satisfy the requirement for a separate verified authorization to make a TSP switch. Therefore, if an end-user has a TSP freeze in effect, both of the following shall apply:

1. A submitting TSP that fails to obtain both authorizations required under (a)1 and 2 above shall be subject to penalties or other enforcement under this subchapter; and
2. A primary TSP that allows a submitting TSP to switch the end-user's TSP without both verifications required under (a) above shall also be subject to penalties or other enforcement under this subchapter.

[(d)] (f) All TSPs responsible for the imposition or lifting of primary TSP freezes shall, in addition to complying with this chapter, also comply with FCC regulations at 47 C.F.R. 64.1190, preferred carrier freezes, as amended or supplemented, which is incorporated herein by reference. As of {effective date of these rules}, the substance of those regulations is as follows:

1. A primary TSP freeze (or freeze) prevents a change in a customer's primary TSP selection unless the customer gives the TSP from whom the freeze was requested his or her express consent to make the switch. All TSPs responsible for the imposition or lifting of primary TSP freezes shall comply with the provisions of this section[.] ;
2. All TSPs responsible for the imposition or lifting of primary TSP freezes shall offer freezes on a nondiscriminatory basis to all customers, regardless of the customer's TSP selections[.] ;
3. Primary TSP freeze procedures, including any solicitation, shall clearly distinguish among telecommunications services (for example, local exchange, intraLATA toll, and interLATA toll) subject to a primary TSP freeze. The TSP offering the freeze shall obtain separate authorization for each service for which a primary TSP freeze is requested[.] ;
4. The following apply to solicitation and imposition of primary TSP freezes[.] :
 - i. All TSP provided solicitation and other materials regarding primary TSP freezes shall include:
 - (1) An explanation, in clear and neutral language, of what a primary TSP freeze is and what services may be subject to a freeze; and
 - (2) A description of the specific procedures necessary to lift a primary TSP freeze; an explanation that these steps are in addition to the verification rules in [N.J.A.C. 14:10-11.3] this section for changing a customer's primary TSP selections; and an explanation that the customer will be unable to make a change in TSP selection unless he or she lifts the freeze[.] ;
 - ii. No TSP responsible for the imposition or lifting of primary TSP freezes shall implement a primary TSP freeze unless the customer's request to impose a freeze has first been confirmed in accordance with one of the following procedures:
 - (1) The TSP responsible for the imposition or lifting of primary TSP freezes has obtained the customer's written or electronically signed authorization in a form that meets the requirement of [(d)] (f)4iii below[.] ;
 - (2) The TSP responsible for the imposition or lifting of primary TSP freezes has obtained the customer's electronic authorization, placed from the telephone number(s) on which the primary TSP freeze is to be imposed, to impose a primary TSP freeze. The electronic authorization shall confirm appropriate verification data (for example, the customer's date of birth or social security number) and the information required in [(d)] (f)4iii(2)(A) through [(D)](C) below. TSPs electing to confirm primary TSP freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism that records the required information regarding the primary TSP freeze request, including automatically recording the originating automatic numbering identification; or
 - (3) An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred TSP freeze and confirmed the appropriate verification data (for example, the customer's date of birth or social security number) and the information required in [(d)] (f)4iii(2)(A)

- through ~~[(D)]~~(C) below. The independent third party shall not be owned, managed, or directly controlled by the TSP or the TSP's marketing agent; not have any financial incentive to confirm primary TSP freeze requests for the TSP or the TSP's marketing agent; and operate in a location physically separate from the TSP or the TSP's marketing agent. The content of the verification shall include clear and conspicuous confirmation that the customer has authorized a primary TSP freeze[.] ;
- iii. A TSP responsible for the imposition or lifting of primary TSP freezes may accept a customer's written or electronically signed authorization to impose a freeze on his or her primary TSP selection. Written authorization that does not conform with this section is invalid and shall not be used to impose a primary TSP freeze[.] ;
- (1) The written authorization shall comply with N.J.A.C. 14:10-[11.3(b) 1ii, iii and viii] 14:10-11.5, concerning the form and content for letters of agency[.] ;
- (2) At a minimum, the written authorization shall be printed with a readable type of sufficient size to be clearly legible and shall contain clear and unambiguous language that confirms:
- (A) - (B) (No change.)
- (C) That the customer understands that she or he will be unable to make a change in TSP selection unless she or he lifts the primary TSP freeze for that particular service[.] ; and
5. (No change.)

[14:10-11.7 Investigations]

- (a) The Board may investigate, upon its own initiative or upon complaint, any allegation of a violation of this subchapter.
- (b) The Board may compel the attendance of witnesses, compel the production of documents, and issue subpoenas in connection with any investigation of an alleged violation of this subchapter.]

[14:10-11.8 Penalties for violations] 14:10-11.10 Enforcement

- (a) TSPs shall adhere to a standard of due care when submitting and processing [changes] switches of primary TSPs. Adherence to this standard means that the TSP has taken all reasonable steps necessary to ensure compliance with this subchapter. There shall be a rebuttable presumption that any violation of this standard is "willful or intentional." The burden of proof shall be upon the submitting or executing TSP to rebut the presumption.
- (b) Any TSP determined by the Board, after notice and hearing, or Board staff to have violated [any rule, regulation or] this subchapter, or a Board order adopted pursuant to [P.L. 1998, c.82] N.J.S.A. 56:8-1 et seq., or [to have violated any] Federal law or [rules] regulation, relating to [changes] switches in primary telecommunications service providers, shall be subject to [any one or more of] the following , as applicable:

1. Suspension or revocation of the TSP's authority to conduct business in the State;
2. Civil penalties within the following ranges, determined according to [the following schedule] N.J.A.C. 14:10-9:
 - i. [A penalty not to exceed] Up to \$7,500 for the first violation; and
 - ii. [A penalty not more than] Up to \$15,000 per violation for each subsequent violation associated with a specific access line; and/or
3. Such other remedies, including, but not limited to, the ordering of restitution to customers as the Board or Board staff deems appropriate.

(c) [In determining the remedies or penalties to be imposed, the Board shall consider: the nature, circumstances and the gravity of the violation; the degree of the TSP's culpability; any history of prior violations; the prospective effect of the penalty on the ability of the TSP to conduct business; any good faith effort on the part of the TSP in attempting to achieve compliance; the TSP's ability to pay the penalty; and any other factors the Board determines to be appropriate.] In the event the State owes money to the TSP, the amount of the penalty, when finally determined, may be deducted from any sums due and owing.

(d) All monies recovered from a civil or administrative penalty imposed pursuant to this section shall be paid into the State Treasury to the credit of the General Fund.

(e) In the event that the Board suspends or revokes the authority of a TSP to conduct business in this State, the TSP which controls access, and/or the TSP responsible for call completion, shall immediately discontinue the revoked TSP's access to the facilities of any underlying TSP, and the TSP responsible for billing the customers of the revoked TSP shall notify each affected customer, advising that each customer has 30 days to choose another TSP.

(f) The Board may investigate, upon its own initiative or upon complaint, any allegation of a violation of this subchapter.

(g) The Board may compel the attendance of witnesses, compel the production of documents, and issue subpoenas in connection with any investigation of an alleged violation of this subchapter.

(h) The remedies provided for in this subchapter are in addition to any other remedies available under any Board order, rule, or finding; and in addition to remedies provided by any other applicable law.

14:10-11.11 Determination of penalties within statutory ranges

(a) This section sets forth the method by which the Board or its designee will determine the penalty for a specific violation, within the ranges set forth at (e), (g), and (i) below.

(b) Each violation as it relates to each separate access line shall be a separate and distinct violation, for which a separate penalty may be assessed. For example, if a

customer has two telephone lines, and a TSP improperly switches the customer's primary TSP for long distance service on both lines, the TSP is liable for two violations. Similarly, if a customer has one telephone line, and a TSP switches both intraLATA and long distance service improperly on that telephone line, the TSP is liable for two violations.

(c) The Board shall classify each violation of this subchapter as minor, moderate, or major, and shall assign penalties as set forth in this section.

(d) The following violations shall be classified as minor violations:

1. Submittal of a third party verification that fails to include verification of any one of the following (each a separate violation):
 - i. That the person requesting the switch is eighteen years old or older;
 - ii. That the person requesting the switch is authorized to do so;
 - iii. The name of the TSP that the customer is switching to;
 - iv. The telephone number of the line that carries the service being switched;
 - v. The services to be switched;
2. A submitting TSP verifies authorization for the change of one line but also changes an associated line that was not specified during the third party verification process; or,
3. If the TSP used a letter of agency, and the line(s) affected are not specified on the letter of agency;
4. Failure to initiate a switch within sixty days after obtaining authorization by letter of agency, internet signup or third party verification;
5. When purchasing a customer base, failure of the acquiring carrier to provide customers with a letter containing all of the following:
 - i. At least thirty days written notice of the transfer;
 - ii. The name of the new TSP;
 - iii. At least thirty days written notice of the customer's right to switch to another TSP; or
 - iv. The rate the customer will be charged for services;
6. When purchasing a customer base, failure to provide the Board with at least thirty days prior written notice of the transfer, and a copy of the letter sent to customers under 5 above; and
7. Change of a customer due to a data entry error.

(e) The penalty for a minor violation shall fall within the following ranges:

<u>First violation</u>	<u>Second violation</u>	<u>Third and subsequent violations</u>
<u>\$100 - \$7,500</u>	<u>\$200 - \$22,500</u>	<u>\$300 - \$37,500</u>

(f) The following violations shall be classified as moderate violations:

1. Failure to obtain a separate authorization for each service to be switched;
2. Failure of the TSP or the TSP's sales representative to drop off the line during the third party verification process, unless the TSP has obtain a drop off exemption from the FCC;
3. TSP switches the service when it is clear during the third party verification process that the customer does not have a complete understanding of what is actually happening; and
4. Any violation not classified as minor or major.

(g) The penalty for a moderate violation shall fall within the following ranges:

<u>First violation</u>	<u>Second violation</u>	<u>Third and subsequent violations</u>
<u>\$400 - \$7,500</u>	<u>\$500- \$22,500</u>	<u>\$600 - \$37,500</u>

(h) The following violations shall be classified as major violations:

1. No verification of a customer's authorization of a switch in service;
2. An audio record of a third party verification, which has a customer voice that is not the same as the customer by whom the switch was allegedly authorized;
3. A fraudulently obtained verification;
4. A forged signature on a letter of agency;
5. A TSP initiates a switch despite a customer's cancellation of the switch authorization during the third party verification process;
6. Failure of the TSP to provide proof of authorization to the Board within thirty days after being notified of an alleged violation, as required under N.J.A.C. 14:10-11.8;
7. When purchasing a customer base, the acquiring carrier provides no notice to customers of the transfer; and
8. When purchasing a customer base, the acquiring carrier provides no notice to the Board of the transfer.

(i) The penalty for a major violation shall fall within the following ranges:

<u>First violation</u>	<u>Second violation</u>	<u>Third and subsequent violations</u>
<u>\$700 - \$7,500</u>	<u>\$800 - \$22,500</u>	<u>\$900 - \$37,500</u>

(j) Board staff may, in its discretion, adjust a penalty determined in accordance with this section, within the ranges set forth at (a) through (h) above, on the basis of one or more of the following factors:

1. The nature, circumstances and gravity of the violation, including the individual and cumulative effect on customers;
2. The degree of the TSP's culpability;
3. Any history or pattern of prior violations;
4. The prospective effect of the penalty on the ability of the TSP to conduct business;
5. Any good faith effort on the part of the TSP in attempting to achieve compliance; and/or
6. Any other factors the Board determines to be appropriate.

[14:10-11.9 Scope of authority]

(k) The rights, remedies, and prohibitions accorded [by the provisions of P.L. 1998, c.82 and this subchapter] the Board under this chapter are in addition to and cumulative of any right, remedy or prohibition accorded by the common law or any statute of this State. [and nothing contained] Nothing in this subchapter shall be construed to deny, abrogate or impair any such common law or statutory right, remedy or prohibition.

(l) Neither P.L. 1998, c.82, nor this subchapter, shall be construed in any way to limit the authority and power of the Attorney General and the Division Consumer Affairs in the Department of Law and Public Safety to enforce any other sections of the Consumer Fraud Act, P.L. 1960, c.39 (N.J.S.A. 56:8-1 et seq.) or any other applicable law, rule or regulation in connection with the activities of telecommunications service providers, even if such activities involve slamming. Nothing in this subchapter shall be construed in any way to abrogate a [customers] customer's private right of action, pursuant to N.J.S.A. 56:8-19.

APPENDIX

New Jersey Board of Public Utilities
Division of Customer Assistance
TSP Slamming Activity Report

Name of Reporting TSP _____

Reporting Period _____

Number of Verified Slamming Complaints _____

Number of Slamming Complaints Resolved with Customer _____

Total Number of Slamming Complaint Received by Reporting TSP identified by Local, Regional or Long Distance TSP Name

Can attach a separate sheet of paper if necessary

*Note: This is a courtesy copy of the proposal. The official version will be published in the New Jersey Register on August 21, 2006.
Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.*

Total Number of Customer's Served by Reporting TSP _____